MBEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: FREMONT UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017021203 ORDER DENYING REQUEST FOR CONTINUANCE AND DENYING REQUEST TO CHANGE VENUE

On April 24, 2017, Student's Father filed a request with the Office of Administrative Hearings to continue the currently set hearing dates. This matter is scheduled for hearing on April 26 and 27, 2017.[1] Student asks for a continuance to May 8, 2017, based on the unavailability of his expert witness, Dr. Elea Bernou, on the currently set dates for hearing. In an exhibit that is part of the request for continuance, there is email correspondence between Father and Fremont Unified School District's attorney in which the parties discuss May 1, 2017, as a date for Dr. Bernou to testify. Fremont filed an opposition to the request for continuance, but indicated availability on May 8 and 9, 2017, if the ALJ continued the hearing.

On April 24, 2017, Student also filed a request to change venue for the hearing which is currently set to be held at Fremont's administrative offices. Student asks that the hearing be held at Ohlone College at their Newark campus. Father claims that Ohlone College is a "neutral location" and can accommodate the public. However, he also indicates that the Ohlone College location is not available for the currently set hearing dates of April 27 and 27, 2017, though it is available for hearing on May 8, 2017. On April 24, 2017, Fremont filed an opposition to the request for change of venue.

APPLICABLE LAW

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the

[1] On the same date Student also filed a request to use a laptop to play part of a recording of an individualized education program team meeting, and a request for telephonic testimony of a witness. These matters will be addressed at hearing.

unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

A due process hearing must be held at a place "reasonably convenient to the parent . . . and the pupil." (Ed. Code § 56505, subd. (b).)

DISCUSSION

Student has not provided good cause to continue the entire hearing to May 8 and 9, 2017. The only reason given in his request to continue the hearing is the unavailability of Dr. Bernou on April 26 and 27, 2017. However, this is Fremont's case, and it is probable that Fremont will be able to present its own witnesses on those dates. A continuance for Dr. Bernou's testimony to a date in May can be requested orally at the hearing. Student's request for continuance is denied at this time. This matter shall proceed on April 26 and 27, 2017.

In his motion for change of venue, Student has not established that the location of Fremont's administrative offices is not reasonably convenient to Father and Student. They live in Fremont, and Student is enrolled as a Fremont pupil. Father has not provided any facts to establish that Fremont cannot provide a neutral environment for the hearing that is accessible to the public (since Student has asked for an open hearing). Father claims that the proposed hearing room at Ohlone has a sound system to accommodate Student's request that a recording be played during the hearing, but the ALJ will determine whether the recording can be played during the hearing, and it is unlikely that the participants would be unable to hear such a recording (if allowed) in the environment of a hearing room at Fremont. Accordingly, Student's request for a change of venue from Fremont is denied.

The parties shall immediately notify all potential witnesses of the hearing dates and location, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date and location, or properly subpoenaed, as applicable.

ORDER

1. Student's request for continuance is denied. The due process hearing shall remain set for April 26 and 27, 2017.

2. Student's request for change of venue is denied. The due process hearing shall occur at Fremont's administrative offices located at 4210 Technology Drive, Fremont, California 94538.

IT IS SO ORDERED.

DATE: April 24, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings