BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

BONITA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023040205

OAH CASE NUMBER 2023040004

ORDER DENYING REQUEST FOR CONTINUANCE

APRIL 28, 2023

On April 25, 2023, Bonita Unified School District filed a request to continue the due process hearing with the Office of Administrative Hearings, OAH. On April 26, 2023, Student opposed the request.

Bonita Unified contends the hearing should be continued because counsel is unavailable on May 25, through May 29, 2023, due to a preplanned vacation out of the country. Bonita Unified estimates the hearing will take appropriately three days to complete. Bonita Unified's counsel is unavailable on the third day of the currently scheduled hearing. Additionally, Bonita Unified notes that Student filed a motion to

delay the start time of the hearing on May 24, 2023, the second day of hearing, until 1:00 PM. Student's motion to delay the start of hearing has not been ruled upon.

Student contends the hearing should not be continued because Student is prepared to proceed to hearing on the dates currently scheduled, except the morning of May 24, 2023. Student claims she will be prejudiced by a continuance because it would delay Student obtaining independent educational evaluations. On April 27, 2023, Bonita Unified argued another basis for the continuance because an expedited matter has been scheduled on the same dates as the currently scheduled matter.

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, or other excusable circumstances;
- A party is unavailable because of death, illness, or other excusable circumstances;
- A party's attorney is unavailable because of death, illness, or other excusable circumstances;
- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice;

- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a reasonable opportunity to prepare for trial regarding the new party's involvement;
- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Bonita Unified did not establish good cause to continue the due process hearing based upon counsel's unavailability on the third day of hearing. This matter may proceed to hearing on the dates currently scheduled, and the Administrative Law Judge presiding will determine the hearing schedule based on counsel's unavailability after the hearing begins. Bonita Unified did not establish good cause to continue the hearing based upon an expedited matter being scheduled on the same dates. It is too soon to determine if the expedited matter will proceed on the dates currently scheduled. Bonita Unified's request to continue the hearing on this basis is denied without prejudice. If the expedited matter is confirmed for hearing, Bonita Unified may request a continuance in this matter as counsel's unavailability based on being engaged in an expediated due process hearing may establish good cause to continue this matter.

The request is denied. All prehearing conference and due process hearing dates are confirmed and will proceed as calendared.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings