BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

GATEWAY COLLEGE & CAREER ACADEMY.

OAH CASE NUMBER 2022080821

ORDER DENYING GATEWAY COLLEGE & CAREER ACADEMY'S MOTION FOR CONTINUANCE OF DUE PROCESS HEARING

JANUARY 17, 2023

On August 26, 2022, Parents on behalf of Student filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings naming Gateway College & Career Academy, called Gateway. The Office of Administrative Hearings is called OAH. The due process hearing is scheduled to commence on January 18, 2023.

On January 4, 2023, Gateway filed a motion to consolidate this action with OAH case number 2022080814, filed by Student on the same date as this action, naming Corona-Norco Unified School District, called Corona-Norco. Student filed an opposition to Gateway's motion to consolidate on January 9, 2023.

On January 9, 2023, OAH held the prehearing conference for this matter. On January 10, 2023, OAH issued an Order Following Prehearing Conference by Videoconference and Order Denying Motion to Consolidate. OAH determined consolidation was not warranted because the issues in this case do not overlap with the issues in the Corona-Norco case, and the factual questions are distinct.. OAH further found that the savings in judicial resources by hearing the cases together would be negligible. Given that Student did not choose to combine the matter and opposed consolidation, Gateway's motion to consolidate was denied.

On January 10, 2023, Gateway filed a motion to continue the due process hearing until after completion of the hearing in Student's case against Corona-Norco. Gateway argues a decision in Student's case against Corona-Norco, Student's district of residence, is necessary in order to avoid inconsistent remedies. Gateway seeks a continuance of the current matter to March 28, 2023.

Student filed an opposition to Student's continuance request on January 12, 2023. Student argues the issues in both cases do not overlap and there is a negligible risk of inconsistent remedies. Gateway filed a reply to Student's opposition on January 17, 2023.

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 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. (Ed. Code, § 56505, subd. (f)(3); 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 or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Denied. Gateway failed to establish a significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (Ed. Code, § 56505, subd. (f)(3); Cal. Rules of Court, rule 3.1332(c).) Gateway's argument it was unaware that Student had filed a case against Corona-Norco does not constitute good cause for a continuance. Gateway offered no evidence it cannot obtain essential witness testimony or other material evidence despite its diligent efforts. Further, Gateway's argument there is a potential for inconsistent remedies if this matter proceeds before the case against Corona-Norco, is based on conjecture as the issues alleged in the current matter and those against Corona-Norco are separate and distinct. Further, although the matters involve the same school year, the issues alleged as to Gateway relate to whether it timely adopted or developed an individualized education program, called IEP, for Student following his transfer to Gateway, whether it provided Student an IEP that outlined Student's goals, modifications, accommodations, and services, and

whether it offered a program sufficient to meet Student's unique needs in academics, occupational therapy, and speech and language. The determination of these issues, as well as any appropriate resolution, are within the purview of an administrative law judge and are not contingent on the outcome of the matter against Corona-Norco.

The due process hearing shall commence on January 18, 2023, at 9:30 am.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings