BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

TURLOCK UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022091016

ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

NOVEMBER 7, 2022

On October 31, 2022, Turlock Unified School District filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter, based upon a conflict with the Student's sibling's case starting on the same day, and its witnesses will not be available for both hearings on the same dates. On November 3, 2022, Student opposed the request claiming the request is without merit because Turlock Unified School District knew about the conflict a month earlier.

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. Turlock Unified School District established good cause for the continuance based on the two sibling cases being held on the same dates, and its witnesses being unavailable to testify at both hearings. Student's claim that Turlock Unified School District knew about the conflict in scheduling is not persuasive as Turlock Unified School District filed a timely request for continuance before the prehearing conference. The request is:

Granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference will be held on November 28, 2022, at 10:00 AM.

Due Process Hearing will be held on December 6, through 8, 2022. The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses, if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date.

IT IS SO ORDERED.

Deborah Myers Cregar

Deborah Myers-Cregar
Administrative Law Judge
Office of Administrative Hearings