BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023030253

ORDER DENYING REQUEST FOR CONTINUANCE

MAY 25, 2023

On May 24, 2023, Elk Grove Unified School District filed a request to continue the due process hearing with the Office of Administrative Hearings, OAH. Although Elk Grove's attorney contacted Student's attorney in the late afternoon on May 23, 2023, and just after noon on May 24, 2023, to discuss the possible need for a continuance, Student's attorney did not respond to Elk Grove's attorney by the time Elk Grove filed the request for continuance, just before the end of the day on May 24, 2023. This Order is being issued immediately because the three business days allowed for Student's response is the first day of hearing. Student has not yet filed any response to Elk Grove's request to continue the due process hearing.

Elk Grove contends the hearing should be continued because Student's case carrier, the teacher of the special day class Student attends, has a pre-planned, pre-paid

vacation beginning Saturday May 27, 2023, and ending Friday, June 16, 2023. The evidence established Student's special education teacher purchased this trip, which includes an international cruise to Europe beginning in the second week, in February 2023. This witness is on both Student's and Elk Grove's witness lists and is expected to have important information relevant to the issues of the case. Elk Grove requests the hearing not start without this witness, and be continued until she returns, to June 20, 2023.

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).)

The parties participated in a prehearing conference on April 24, 2023. At that time, the ALJ ordered the hearing be continued to date, both Student and Elk Grove agreed were available for them, May 31 and June 1, 2023. The April 26, 2023, Order Following Prehearing Conference stated:

The parties shall immediately notify all potential witnesses of the hearing dates 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 or properly subpoenaed.

Elk Grove's attorney did not comply with the Order because she did not immediately notify all potential witnesses of the hearing dates. Elk Grove's attorney waited until after a further prehearing conference was held on May 19, 2023, and contacted the potential witnesses on May 23, 2023. On May 23, 2023, Elk Grove's attorney learned Student's special education teacher was not available on May 31, 2023, or immediately thereafter. Student's special education teacher will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing because the witness was not properly and timely notified of the hearing date, as ordered.

Student listed her special education teacher as an intended witness on her original prehearing conference statement, filed April 20, 2023. Student did not raise this teacher's unavailability on and immediately after May 31, 2023, during the May 19, 2023, prehearing conference. This suggests Student's attorney either also did not comply with the April 26, 2023, Order by not immediately notifying all potential witnesses of the hearing dates, or Student was aware and is not concerned about the special education teacher not being available to testify until Monday, June 19, 2023.

Student's amended prehearing conference statement listed 11 witnesses, including Student's special education teacher. Elk Grove's amended prehearing conference statement listed 19 witnesses, seven of whom are also on Student's witness list, including that teacher. On May 19, 2023, Elk Grove sought contact information for and intended to schedule witness preparation sessions with 14 of its employees. Elk Grove did not establish why the hearing cannot begin as previously agreed to and scheduled, on May 31, 2023, with other witnesses testifying while Student's special education teacher is on vacation and have the special education teacher testify after she returns.

Elk Grove did not establish good cause to continue the due process hearing. The request is denied. All due process hearing dates are confirmed and will proceed as calendared. This request for continuance is denied without prejudice to Student or Elk Grove requesting a continuance after the due process hearing has started to accommodate the scheduled return of the special education teacher.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings