BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

SIMI VALLEY UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2023010221

ORDER DENYING STUDENT'S REQUEST FOR CONTINUANCE

JANUARY 23, 2023

On January 19, 2023, Parent on behalf of student filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter, based upon the unavailability of her attorney on the scheduled due process hearing dates of January 31, 2023, and February 1 and 2, 2023. Student requests to continue the matter to April 4, 2023, through April 6, 2023. On January 20, 2023, Simi Valley Unified School District opposed the request, arguing that Student did not establish good cause for a continuance, and that the matter should be resolved in a speedy manner because the issue for hearing is whether Student should be discharged from a residential treatment center, a highly restrictive setting.

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. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. The continuance request is denied as Student did not establish good cause for a two-month continuance. Parent intends to retain attorney Andrea Marcus for this hearing. On October 19, 2022, Attorney Marcus filed a complaint on behalf of Student in which she also requested a stay put of Student's placement at a

residential treatment facility. OAH designated that case number 2022100535. On December 16, 2022, Student withdrew his complaint in OAH Case number 2022100535.

Simi Valley filed the current matter on January 9, 2023. Attorney Marcus has not filed a notice of representation in the current matter, making her unavailability for hearing of little relevance. Student failed to demonstrate that they made diligent efforts to find counsel for the currently scheduled hearing dates given Parent's knowledge of Attorney Marcus's unavailability. Student did not show that Parent is unavailable on the scheduled hearing dates. As such, Student failed to demonstrate good cause for a continuance and the motion to continue is denied.

IT IS SO ORDERED.

Cararea Lucier

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings