BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENTS ON BEHALF OF STUDENT,

and

CARMEL UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022070678

OAH CASE NUMBER 2022060843

ORDER GRANTING CONTINUANCE AND SETTING DUE PROCESS HEARING

SEPTEMBER 6, 2022

On September 6, 2022, Carmel Unified School District filed with the Office of Administrative Hearings, referred to as OAH, a request to not hold hearing on Thursday, September 8, 2022, based upon the sudden, unavoidable unavailability of Carmel's primary attorney and the previously scheduled unavailability of Carmel's secondary attorney on Thursday, September 8, 2022, until Tuesday, September 13, 2022. Carmel's secondary attorney indicated Student's attorney agreed to reschedule witness and not hold hearing on Thursday, September 8, Friday, September 9, or Monday, September 12, 2022.

OAH contacted Student's attorney who confirmed Carmel's attorney's representation, and further agreed to continue the start of the due process hearing until Tuesday, September 13, 2022.

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 Carmel's request for good cause and considered all relevant facts and circumstances. Due to Student's agreement a few days' delay will not prejudice Student, the start of the due process hearing is continued to Tuesday, September 13, 2022, which will allow hearing days to proceed consecutively.

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.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings