BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2020120161

ORDER GRANTING STUDENT'S MOTION FOR CONTINUANCE

JUNE 23, 2021

On June 22, 2021, Student filed with the Office of Administrative Hearings, referred to as OAH, a Motion to Continue the last day of the due process hearing. Student's Motion was supported by a declaration from Student's attorney Sheila Bayne. Student requested a four to six week continuance of the last day of the hearing, scheduled for June 22, 2021, asserting that Parent and a percipient witness were unavailable. Student's oral request on June 22, 2021 to continue the hearing for the purpose of taking testimony of Student's expert witness is addressed in a separate Order.

On June 22, 2021, the undersigned administrative law judge, called ALJ, convened the last day of the recorded due process hearing to order, using Microsoft Teams. Attorney Bayne represented Student. Attorney Sundee Johnson represented Chaffey Union High School District. Representatives of Chaffey and the West End Special Education Local Plan area were also present. The ALJ considered oral argument from the parties regarding Student's motion to continue. No witnesses were called and no evidence was presented for hearing.

By way of background, the parties confirmed at the end of hearing on June 17, 2021, that Parent, percipient witness Erica Barreto, Student's then unnamed expert witness, and Chaffey special education director Whelan as a rebuttal witness, would testify on June 22, 2021, the last day scheduled for hearing. Attorney Bayne's June 21, 2021 declaration in support of the Motion to Continue asserted that on June 21, 2021, at approximately 6 p.m., attorney Bayne learned that Parent's medical provider ordered Parent to undergo surgery at 6:00 a.m. on June 22, 2021, rendering Parent unavailable to testify as scheduled. Attorney Bayne's declaration offered no verified facts pertaining to the unavailability of percipient witness Barreto. At oral argument, Attorney Bayne represented that Barreto, a Chaffey employee, required a subpoena for appearance. The witness was out of the country through June 21, 2021, and, although Student made attempts to do so, Barreto was not reachable by subpoena before June 22, 2021.

The ALJ ordered Attorney Bayne to submit supporting evidence from Parent's medical providers, surgical facility or other medical professional, generally supporting the emergency nature of Parent's unavailability, and establishing a reasonable time period for recovery such that Parent could competently appear for testimony by telephone or Microsoft Teams during the week of July 13, 2021. The ALJ deferred to Student's counsel to acquire appropriate evidence from Parent's medical provider(s) that

Parent was unavailable to testify on June 22, 2021, and what was the reasonable anticipated recovery time, due to a medical reason. The ALJ also ordered Attorney Bayne to serve on Attorney Johnson a separate proof of service identifying any medically sensitive documents filed with OAH for consideration of Student's continuance request. The ALJ noted that any such confidential documents provided to OAH would remain confidential and the ALJ would consider those documents *in camera* for purposes of verifying the emergent need for a continuance, and Parent's availability to testify.

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. Parent on Student's behalf filed the request for due process hearing in this matter on December 1, 2020. The Individuals with Disabilities Education Act mandates speedy resolution of due process cases. This case did not begin hearing until six and one-half months after the complaint was filed, following two continuance requests and a mediation.

Regarding Parent's unavailability, Attorney Bayne did not provide any evidence other than another attorney declaration. Attorney Bayne's declaration was sufficient to establish Parent's unavailability for hearing on June 22, 2021. However, Attorney Bayne's declaration offered no additional evidence that supported a finding at this time that Parent's asserted recovery from a medical emergency required a six-week delay in the last day of hearing. The declaration did not establish that Parent would be incapable of appearing virtually or by telephone, with reasonable accommodations if needed, to provide competent testimony, as determined by the ALJ, three weeks after June 22, 2021. A party or participant in this case, such as a witness, requiring reasonable accommodation to participate in a hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable accommodation is available on OAH's website at: https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Accommodations-at-OAH.

Although a continuance for three weeks is reasonable in consideration of all facts, including a legal holiday observance on July 5, 2021, Student has failed to establish a need for a continuance for longer than three weeks at this time because of Parent's unavailability.

Student also established during oral argument that good cause exists to continue the hearing for a short time to allow Student time to subpoena witness Baretta. However, the parties agreed at oral argument that the witness's testimony would last no more than 30 minutes and the ALJ confirmed that counsel will be held to that time limit.

Therefore, Student's request to continue the hearing for the limited purpose of taking testimony from Parent, witness Barreto, rebuttal testimony from Chaffey's special education director Whelan, and Student's expert witness, is granted for good cause due to the unavailability of Parent and witness Barreto on June 22, 2021.

The due process hearing is continued to Thursday, July 15, 2021, at 9:30 a.m. The parties shall ensure that all scheduled witnesses, including Student's expert witness, are available to testify on that date, at specific times to be determined by the parties.

The failure by any party to produce any previously identified and scheduled witness on July 15, 2021 may result in preclusion of the witness, absent an evidentiary showing of good cause for the witness's unavailability.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings