BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023050768

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

JUNE 7, 2023

On May 19, 2023, Student filed a request to continue the due process hearing with the Office of Administrative Hearings, called OAH, naming Fremont Unified School District, called Fremont.

On May 30, 2023, Student filed a request for a continuance of the due process hearing stating that Student needed to prepare for another Superior Court case with Fremont which required the parties to appear in Superior Court on June 15, 2023. Student requested that the hearing be continued to July 17, 2023, or later, along with continuance of the prehearing conference, called the PHC, and related PHC statement filings.

On June 1, 2023, Fremont filed a non-opposition to the continuance request. Fremont disputed Student's characterization of the Superior Court case's impact on this case before OAH, but did not oppose Student's hearing continuance request. Fremont specifically requested that the hearing continue to August 22, 23, and 24, 2023.

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 considered the continuance request for good cause. This is a first continuance request on a recently filed matter. Student demonstrated good cause for a

brief hearing continuance to prepare for hearing on a prior filed matter. The PHC and hearing are continued as follows:

PHC, HEARING DATES, TIMES, AND LOCATION

The PHC is continued to August 11, 2023, at 10:00 AM.

The hearing will take place on August 22, 23, and 24, 2023, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. PHC statements and motions are due to OAH no later than three business days before the PHC or with a showing of good cause why it was not timely filed.

PARTICIPANT INFORMATION SHEETS FOR THE PHC AND DUE PROCESS HEARING MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

PHC AND HEARING LOCATION

OAH is authorized to conduct PHC and due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the PHC and due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at

https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings