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 GRANTING REQUEST FOR CONTINUANCE AND SETTING DUE PROCESS HEARING

MAY 31, 2023

On May 25, 2023, Elk Grove Unified School District requested a continuance based on Student's case carrier, who is her special day class teacher, being on out-of-state and then international travel during the dates set for hearing. The Administrative Law Judge denied the request on the same date, requiring the parties to call the many other witnesses planned and then, if necessary, seek a continuance to accommodate the scheduled return of case carrier.

On May 26, 2023, two business days before the date set for hearing, Student filed a notice of additional witnesses and documents and requested to be permitted to proceed with the hearing as scheduled, including the untimely disclosed witness.

Student declared her alternate intention to request a continuance of the hearing if Student would not be permitted to call the untimely disclosed witnesses. Despite attaching a proof of service declaring under penalty of perjury that an employee of Law Offices of Sheila C. Bayne, Esq. had served Elk Grove's attorneys with the notice of additional witnesses and documents on May 26, 2023, it was determined and admitted on May 31, 2023, that Student had not served Elk Grove's attorney.

On May 31, 2023, the first day of hearing, Student and Elk Grove discussed with the Administrative Law Judge numerous problems Student and Elk Grove each had regarding the availability of several witnesses due to retirements and the expiration of a services contract with a related services provider who resides out-of-state and provided Student service through videoconferencing. Further, Student and Elk Grove had difficulty scheduling witnesses according to the parties' preferences.

Student requested to continue the hearing, and Elk Grove consented to a continuance to the date Elk Grove requested on May 25, 2023, specifically June 20, 2023. Student also consented to a continuance until June 20, 2023, to afford the parties adequate time to coordinate with witnesses regarding service of subpoenas and to schedule witnesses according to the parties' preferences.

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).)

Student established good cause to continue the due process hearing to continue meet and confer efforts with Elk Grove regarding necessary contact information to issue subpoenas for witnesses no longer under Elk Grove's control due to retirements and the expiration of a services contract with a related services provider who resides out-of-state.

The request is granted. All previously scheduled dates are vacated. The new dates are:

DUE PROCESS HEARING will be held on June 20, 21, and 22, 2023.

The due process hearing will be held by videoconference or telephone, unless otherwise ordered. The due process hearing will begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, Mondays and Fridays included, at the discretion of the Administrative Law Judge.

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings