BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022110145

ORDER DENYING STUDENT'S MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE TO ADVANCE HEARING DATES

DECEMBER 29, 2022

On November 4, 2022, Student filed a due process hearing request naming Santa Monica-Malibu. OAH set the hearing dates for December 20, 21, and 22, 2022. On December 7, 2022, Santa Monica-Malibu filed a first request for hearing continuance in this matter, supported by two declarations and exhibits. On December 9, 2022, Student filed an opposition to the Santa Monica-Malibu's motion to continue, with the declaration of Student's counsel and exhibits.

On December 12, 2022, OAH issued an Order granting Santa Monica-Malibu's motion, finding that Santa Monica-Malibu demonstrated good cause because key

witnesses would be unavailable for the scheduled hearing and because its counsel was thereafter scheduled for hearings in older due process matters. OAH set the continued hearing for March 28, 2023.

On December 14, 2022, Student filed a Request for Reconsideration re Continuance of Hearing Dates. On December 16, 2022, Santa Monica-Malibu filed opposition to Student's motion.

Student's motion presents no new facts or arguments which Student did not present in opposition to the motion to continue, and which were therefore already considered by the Administrative Law Judge in granting the continuance. Nor does Student present facts or arguments which were unknown to him at the time of his opposition to the motion to continue. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) In fact, Student's present motion does not ask that Santa Monica-Malibu's motion for continuance be denied but, instead, seeks an order advancing the hearing date to sometime in early January 2023.

A request to advance a hearing date is similar to motion to continue. The moving party must demonstrate good cause. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; 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. (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 change in hearing dates; the impact of advancing a hearing on other pending hearings; whether trial counsel is engaged in another trial;

whether the parties have stipulated to an earlier hearing date; whether the interests of justice are served by advancing the hearing; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

Here, Student argues that he is prejudiced by the continuance of the hearing to March 28, 2022, because he is in in Juvenile Hall as a result of an incident that occurred in August 2022, at Santa Monica High School. Student further alleges that Santa Monica-Malibu "caused a school to prison pipeline by systematically, year after year, failing to identify, evaluate and serve a child with disabilities under its jurisdiction."

Other than this assertion, Student offers no fact, evidence or argument of how Student is prejudiced by having the hearing in March, as opposed to January, 2023, because he is in Juvenile Hall. Student has not demonstrated good cause for advancing the hearing date. Student's motion is denied.

IT IS SO ORDERED.

Ted Mann

Ted Mann
Administrative Law Judge
Office of Administrative Hearings