BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023100346

ORDER GRANTING DISTRICT'S SECOND REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND HEARING

NOVEMBER 29, 2023

On October 11, 2023, Student filed a request for due process hearing naming Manhattan Beach Unified School District as respondent. On November 16, 2023, OAH granted Manhattan Beach's requested continuance of the hearing from November 28, 2023 to December 12, 2023 based on Manhattan Beach's counsel's hearing conflict in an earlier filed case. That ruling was confirmed after reconsideration on November 17, 2023.

On November 27, 2023, Manhattan Beach filed a second request for continuance. This continuance request is based on a new conflict that arose when another, earlier

filed case, was continued to December 12, 2023 during a prehearing conference on November 20, 2023. Manhattan Beach asserted its first hearing availability was February 8, 2024.

Student opposed the continuance request on November 28, 2023, on the grounds that any continuance of the hearing prejudices Student, Manhattan Beach has two lawyers and could assign one to each case, and that Manhattan Beach's asserted conflict for district staff was not supported by evidence. Student also argues that Manhattan Beach failed to establish good cause for a continuance to February 8, 2024.

OAH must conduct a due process hearing and render a decision within 45 days of receipt of the due process notice, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

During the prehearing conference for the conflicting case, the presiding Administrative Law Judge was informed of the conflict he would create in this case by ordering the other case to proceed on December 12, 2023. However, that ALJ correctly ordered the hearing in the other case, which was filed in April of 2023, to proceed on December 12, 2023, noting that this case, just filed in October 2023, could not take priority over the earlier filed matter. Manhattan Beach has established good cause for a continuance of the hearing based on a hearing conflict.

Student argues that, because Manhattan Beach has two attorneys, it should be ordered to proceed on both cases. However, Student offers no legal authority mandating such an order. Nor has Student offered evidence establishing prejudice to Student resulting from a second continuance. Student argued prejudice based on paying private school expenses. However, Parents who unilaterally move their child to a private placement, without the consent of the school district, do so at their own financial risk. (*Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 15 (quoting *School Comm. of Burlington v. Dept. of Educ. of Mass*. (1985) 471 U.S. 359, 373-374); see *W.G. v. Bd. of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1487.) Parent retains the right to seek reimbursement via due process, but provided no legal authority that paying such expenses overcomes a finding of good cause to continue a case.

Manhattan Beach, however, has failed to offer good cause to continue the case to February 8, 2024. As in its last request for continuance, Manhattan Beach has failed to offer any good cause for continuing the case over two months. No evidence supporting such a lengthy delay, on the basis of Manhattan Beach witness unavailability from now through the first week of February, nor counsel conflict for the continuance period requested, nor any other basis, has been offered. Good cause is required to support both the need for, and the length of a continuance request.

Due to the hearing conflict, Manhattan Beach's second request for continuance is granted. All previously scheduled dates are vacated. The continuance length requested has not been supported by good cause. The new dates are:

PREHEARING CONFERENCE will be held on December 29, 2023, at 10:00 AM.

DUE PROCESS HEARING will be held on January 3, and 4, 2024.

The prehearing conference, and 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. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference. Late motions will only be considered if good cause is established for the late filing.

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.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings