BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

V.

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022110145

ORDER GRANTING REQUEST FOR CONTINUANCE

DECEMBER 12, 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 the matter.

Santa Monica-Malibu represented that its Special Education Director and Special Education Coordinator will be on scheduled vacations during the hearing dates which will be during its winter break. Santa Monica-Malibu also represented that six other witnesses will not be available for testimony because of winter break vacations. Santa Monica-Malibu supported its request for continuance with declarations under the penalty of perjury. Santa Monica-Malibu requested that the hearing be continued to March 28 through 30, 2023, and a mediation be scheduled on January 27, 2023, from

1:30 PM to 5:00 PM. Santa Monica-Malibu met and conferred with Student who represented to Santa Monica-Malibu that Student would not oppose, but would not join, in the motion to continue the hearing.

On December 9, 2022, Student filed an opposition to the motion to continue the hearing on the basis that Santa-Monica Malibu delayed in requesting a continuance and refused to accept service for witnesses causing Student to expend the costs to subpoena witnesses for hearing. Student requested that OAH order Santa-Monica Malibu to reimburse costs associated with subpoenaing witnesses. Student also represented he would not participate in mediation if it delayed the hearing.

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. Because the complaint was filed recently, witnesses are not available for testimony during the hearing dates, and this is a first hearing continuance request, OAH grants Santa Monica-Malibu's hearing continuance request. Student's request for shifting costs associated with subpoenaing witnesses is denied as each party bears their own litigation costs and Student cited to no authority supporting his request. All dates are vacated. This matter will be set as follows:

PREHEARING CONFERENCE will be held on March 17, 2023, at 10:00 AM.

DUE PROCESS HEARING will be held on March 28, 29, and 30, 2023.

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

The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness. Prehearing conference statements and motions are due to OAH no

later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings