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 REQUEST FOR CONTINUANCE AND SETTING DUE PROCESS HEARING

DECEMBER 19, 2023

On December 14, 2023, Manhattan Beach Unified School District filed a request to continue the due process hearing with the Office of Administrative Hearings, called OAH. On December 19, 2023, Student filed an opposition to Manhattan Beach's motion.

Manhattan Beach contends the hearing should be continued from January 3, 2024 to February 8, 2024 because Manhattan Beach's attorneys are unavailable due to vacation plans. Also, Manhattan Beach is on winter recess from December 25, 2023 through January 5, 2024, and contends that teachers, staff, and members of Student's IEP team will not be available to testify.

Student contends Manhattan Beach has not demonstrated good cause for a continuance, because the matter has been continued two times before at Manhattan Beach's request, and Manhattan Beach failed to identify all of its upcoming conflicts in each of its prior motions to continue, even though it requested continuances to hearing dates on or after February 8, 2024. Student contends the present motion to continue should be denied because Manhattan Beach did not assert the grounds for continuance "as soon as reasonably practical once the necessity for the continuance is discovered." (Cal. Rules of Court, rule 31332(b).)

Student further contends that, if a continuance is granted despite the untimeliness of Manhattan Beach's request, Manhattan Beach's supporting declarations do not identify any conflicts for the dates of January 9, 10 and 11, 2024, and there is no good cause to continue the hearing beyond those dates.

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).)

Manhattan Beach should have disclosed the conflicts that form the basis for its present continuance request in its prior continuance motions. The first motion, filed November 14, 2023, requested a continuance of the hearing to March 5, 2024. The second, filed November 27, 2023, requested a continuance to February 8, 2024. Each motion identified the requested hearing dates as the first dates on which the district and its legal counsel were available after the conflicted existing hearing dates. However, the supporting declarations did not address the reasons why Manhattan Beach and its attorneys were unavailable during the period between the existing hearing dates and the proposed new dates.

In Manhattan Beach's present motion, the supporting declarations establish good cause for a one-week continuance of the hearing dates, only, to January 9, 10 and 11, 2024. Manhattan Beach's attorney Julie Coate is available for the presently-scheduled

December 29, 2023 prehearing conference. Manhattan Beach attorney Christopher Fernandes is available on January 9, 10, and 11, 2024. Attorney Coate has a mediation scheduled for January 9, 2024, but is available on January 10 and 11, 2024. Manhattan Beach has staff meetings and individual education program team meetings scheduled on January 10 and 11, 2024, but does not contend that it would have no witnesses or representatives available on those days.

Manhattan Beach's request for a continuance is granted, but not for the length of time requested. The December 29, 2023 prehearing conference shall proceed as scheduled. The previously scheduled hearing dates are vacated. The matter shall proceed as follows:

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

DUE PROCESS HEARING will be held on January 9, 10 and 11, 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. Revised prehearing conference statements are not required, but may be filed no later than three business days before the prehearing conference. Any 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.



Robert G. Martin
Administrative Law Judge
Office of Administrative Hearings