

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

NEWARK UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021080439

ORDER DENYING SECOND REQUEST FOR CONTINUANCE

OCTOBER 25, 2021

On August 13, 2021, Student filed a request for due process hearing with the Office of Administrative Hearings, referred to as OAH, naming Newark Unified School District as respondent. A prior request for continuance, to conduct settlement discussions and assessment results, was granted on September 21, 2021. The hearing is currently scheduled for prehearing conference on October 25, 2021 at 1:00 PM and for hearing beginning November 2, 2021.

On October 25, 2021, a second request to continue this matter was submitted on the grounds that a "key substantive term of the agreement that will require some time to finalize" had been overlooked by the parties." The parties ask that the prehearing conference be continued to November 29, 2021; and that the hearing be continued to December 7, 2021.

As explanation for the late motion filing, the parties state that this key omission was only realized on Saturday, October 23, 2021. The parties also continue to request additional time for to discuss assessments due to the special education director's extended absence due to illness. The parties also express concern that the special education director may not be available to prepare for or attend the currently scheduled hearing. However, no date for her anticipated return was provided and no evidence of her continued illness beyond October 22, 2021, such as a physician's note or declaration from the special education director, was included in the moving papers. Finally, Newark's counsel notes that she is scheduled for travel out of the country from November 17, to 26, 2021. However, evidence of the travel arrangements indicates counsel knew of these plans when the last continuance was requested and no conflict with the currently scheduled hearing is demonstrated. Counsel also notes that Parent - Teacher conferences are scheduled for that week, making access to teachers more difficult. However, no evidence of specific witness unavailability for the currently scheduled hearing was included with the moving papers.

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. (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).)

The parties established cause for the late filing; however, have failed to establish good cause for a second continuance. The request for a second continuance is denied. All dates will proceed as calendared.

IT IS SO ORDERED.

Penelope S. Pahl

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Administrative Law Judge

Office of Administrative Hearings