

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021100075

ORDER FOLLOWING PREHEARING CONFERENCE DENYING
REQUEST FOR CONTINUANCE

NOVEMBER 29, 2021

On November 22, 2021, Administrative Law Judge Ted Mann, Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. The Office of Administrative Hearings will be referred to as OAH.

Sheila Bayne and Robert Burgermeister, Attorneys at Law, appeared on behalf of Student. Cathy Holmes, Attorney at Law, appeared on behalf of Elk Grove Unified School District. The PHC was recorded.

At the PHC, and following oral argument in this matter, the ALJ requested supplemental briefing from the parties on the issue of mootness and continuance of this

matter. Both parties have now filed their supplemental briefs and the matter is ready for a determination.

Based upon discussion with the parties and the supplemental briefs, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

In its motion to continue, dated November 18, 2021, Elk Grove moved to continue the prehearing conference and due process hearing based on its contention that the individualized educational program, called IEP, team needed to meet to determine Student's possible regression, and if needed, remedial services, prior to the matter being ripe for litigation. The motion was timely filed. Student opposed a continuance on the grounds that Student is entitled to a timely hearing on the issues alleged by Student, regardless of any departmental guidance from the Federal government or the State of California.

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).)

Here, Elk Grove has been seeking to hold an IEP team meeting to discuss Student's possible regression, and if needed, remedial services, since approximately November 3, 2021, following an unproductive resolution session. Elk Grove scheduled an IEP team meeting for November 17, 2021, a continuation of the IEP begun on September 17, 2021. The meeting was convened on November 17, 2021, but terminated when Student's representative, James Peters, refused to participate in the IEP and left the videoconference IEP meeting. The IEP has not been rescheduled and Student's attorney represented at the PHC that Student did not wish to participate in a further IEP meeting, including on the regression issue, and instead wished to proceed to hearing on the matter.

In support of its contentions, Elk Grove cites to a recent order by an OAH ALJ granting a similar request to continue a hearing as Elk Grove makes herein. In that case, the ALJ granted a brief, 21-day continuance of the PHC and hearing to allow a previously scheduled IEP team meeting to be held. The meeting was scheduled for November 12, 2021, four days after the ALJ's order. The ALJ reasoned that the brief delay was warranted due to the possibility that the issue of regression could be addressed at the IEP meeting. *In the Matter of: Parents on Behalf of Student v. Elk Grove Unified School District, OAH Case No. 2021090707.*

Unlike the ALJ's order in OAH Case No. 2021090707, there is no pending IEP meeting in this case. The most recent IEP meeting on November 17, 2021, was terminated by Student's representative. No meeting has been rescheduled. Student's attorney represented at the PHC that Student was not interested in attending an IEP meeting and wished to proceed to hearing.

Student contends that they seek resolution of this issue through the hearing process without further delay. As discussed above, such a position has substantial support, and absent good cause a hearing should proceed to hearing in a timely fashion. Although the IDEA favors negotiation and alternative dispute resolution means, it takes two to tango, and Student is entitled to a timely hearing. At hearing, an ALJ can consider the regression issue and the relevant evidence, potentially including witness testimony, and render a decision, irrespective of whether or not an IEP meeting has been held to address regression. Elk Grove has not established good cause for the continuance requested, and its motion for a continuance is denied. The matter will proceed to hearing on the dates identified in the PHC Order of November 22, 2021, specifically December 14, 2021, through December 16, 2021.

IT IS SO ORDERED.

Ted Mann

Ted Mann

Administrative Law Judge

Office of Administrative Hearings