

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021100280

ORDER GRANTING REQUEST FOR CONTINUANCE AND
SETTING PREHEARING CONFERENCE AND HEARING

NOVEMBER 22, 2021

On November 18, 2021, Student and San Juan Unified School District filed with the Office of Administrative Hearings, referred to as OAH, a joint request to continue to allow the parties time to finalize a settlement agreement, the completion of which was delayed by illness of Student's counsel. The parties requested the matter be continued to January 25-27, 2022, as the earliest dates of availability for the attorneys and witnesses. On November 22, 2021, Student filed a request for continuance on grounds Student's counsel had come down with an acute illness requiring immediate medical care, and would be unavailable for the prehearing conference scheduled for November 22, 2021, and possibly for the presently set hearing dates of November 30 through

December 2, 2021. Also on November 22, 2022, San Juan filed a response concurring in Student's request for a continuance.

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. Neither the joint request for continuance, nor Student's request, is supported by sworn declaration, and a need for additional time to negotiate a settlement is not generally grounds for continuance. However, an acute illness is an emergency that might excuse the failure to file a sworn declaration. As the parties have

jointly requested a continuance, and the matter has not been continued previously, the request is:

Granted. All dates are vacated. The continuance request is granted as of the date of this order. This matter will be set as follows:

Prehearing Conference will be held on January 14, 2022 at 1:00 PM

Due Process Hearing will be held on January 25 through 27, 2022. 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.

A handwritten signature in black ink, appearing to read "Robert G. Martin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings