

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021070879

ORDER DENYING SECOND REQUEST FOR
CONTINUANCE OF DUE PROCESS HEARING

DECEMBER 2, 2021

On July 27, 2021, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings naming San Marcos Unified School District. The Office of Administrative Hearings is referred to as OAH.

On September 8, 2021, the parties filed a Joint Request to Schedule Mediation and Continue Hearing Dates. OAH issued an Order Denying Request for Mediation and Granting Request for Continuance of Hearing on September 8, 2021. The parties' request for mediation was denied on the basis the chosen mediation date was unavailable. OAH continued the due process hearing to December 14, 2021, through December 16, 2021.

The parties filed a Joint Request to Schedule Mediation on September 9, 2021, and OAH issued an Order Granting Request to Schedule Mediation that same day, and the parties participated in mediation on November 8, 2021.

On December 1, 2021, the parties filed a Joint Request to Continue Due Process 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).)

The parties' Joint Request to Continue the Due Process Hearing does not contain any facts establishing good cause for a second continuance of the due process hearing and is not supported by a sworn declaration. Accordingly, the parties' joint request fails to establish good cause for continuance of the due process hearing and is denied. This denial is without prejudice to the parties' right to seek a continuance of the due process hearing by filing a motion demonstrating good cause for a continuance. In the event the parties choose to file a motion to continue the due process the hearing, the motion shall be supported by sworn declaration.

All dates shall remain on calendar as currently scheduled.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings