

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT.
OAH CASE NUMBER 2021080428

ORDER DENYING REQUEST FOR CONTINUANCE

DECEMBER 13, 2021

On December 7, 2021, Etiwanda School District filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter, based upon the school district being on winter break and several district employees who will be witnesses being on vacation, and Etiwanda's director of special education being scheduled for surgery in mid-to-late December with a two week recovery planned during the winter break.

On December 13, 2021, Student opposed the request based upon not wanting Student's hearing delayed.

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. The request is:

Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. The continuance request is denied as Etiwanda has not stated good cause. Based upon Student's filing of an amended complaint, OAH issued a scheduling order on November 5, 2021, informing the parties the hearing is set for December 28, 29, and 30, 2021. Etiwanda was aware, as of November 5, 2021, that it was closed for winter break during the dates set for hearing and therefore might have employee witnesses who would travel or otherwise claim to be unavailable to testify.

However, Etiwanda waited more than one month to request a continuance to accommodate those witnesses due to the school district's winter break. Further, because the due process hearing will be conducted via videoconference, Etiwanda's employee witnesses have the ability to appear for hearing from almost any location, and Etiwanda did not demonstrate that any of its employee witnesses will not have access to telecommunications services to allow them to participate in the due process hearing either by videoconference with webcam, by video conference with audio only, or telephonically. While the speech-language pathologist asserted she will not have internet service at her father's home in Arizona, Etiwanda did not demonstrate it could not provide her internet access via a mobile hot spot, or that she would not have telephone service to be able to appear telephonically, or that her testimony could not be delayed until she returns from Arizona. While a special education teacher asserted she will be camping in a location that has "limited access to the internet" and "no cell service," Etiwanda did not demonstrate that it could not provide her internet access via a mobile hot spot, or that her testimony could not be delayed until she returns from camping. And although the director of independent studies asserted she will be camping and therefore "not have access to the internet," Etiwanda did not demonstrate that it could not provide her internet access via a mobile hot spot, or that her testimony could not be delayed until she returns from camping.

Additionally, while Etiwanda's director of special education declared under penalty of perjury she plans to have surgery in "mid-to-late December" and expects a two week recovery, which she thoughtfully scheduled during Etiwanda's winter break to minimize disruption to her work responsibilities, her testimony can be delayed to a later date after testimony of other witnesses has been taken, affording her the opportunity for a full recovery during Etiwanda's winter break. Etiwanda did not demonstrate that

her unavailability during the first three days of the due process hearing requires the start of the hearing to be continued.

Student and Etiwanda shall coordinate a witness schedule for December 28, 29, and 30, 2021, that allows testimony of witnesses who are not recuperating or truly out of telecommunications range on those dates. Witnesses who are not available on those dates shall be scheduled to testify beginning January 4, 2022.

Student and Etiwanda may compel Etiwanda employee witnesses' attendance via subpoena if Etiwanda asserts it cannot produce its employee witnesses under the terms of their employment contract(s). As both Student's and Etiwanda's attorneys are aware, OAH will require Etiwanda to provide Student's attorneys with Etiwanda employee witnesses' contact information to facilitate service of subpoenas if Etiwanda is unwilling or unable to accept service on their behalf.

OAH previously denied the parties' joint request for a mediation due to unavailability on the single date the parties requested. OAH requested the parties "promptly resubmit" another request with alternative mediation dates, and the form for such requests allows parties to present and first and second preference for mediation dates. The parties have not availed themselves of this opportunity. Student and Etiwanda are encouraged to continue direct communication to explore whether mutually agreeable dates for mediation can be selected, and to discuss the possibility of the parties' mutual agreement to alternative hearing dates.

Finally, Student's opposition states that Student's attorney is presently scheduled for a jury trial, starting the week of January 10, 2022. Student's counsel is advised that OAH will not continue this matter to accommodate the jury trial based on Student's counsel's opposition to Etiwanda's continuance request. Accordingly, Student has until

December 16, 2021, to make any continuance request, and OAH will not accept any continuance request from Student based on the jury trial setting conference of December 17, 2021.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings