

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

HESPERIA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090391

ORDER DENYING REQUEST FOR CONTINUANCE

DECEMBER 10, 2021

On December 9, 2021, Parent on behalf of Student filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter, based upon the unavailability of trial counsel, supported by a declaration. Hesperia Unified School District filed a non-opposition on the same date.

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).)

Student's request is based upon the unavailability of Student's "trial counselor" because of an unexpected family illness. While this would normally demonstrate good cause for a continuance, the request's declaration was signed by attorney Carolyn E. Ruth, the only California licensed attorney of record for Student. Attorney Ruth declared that she "telephonically received notice this morning, December 9, 2021, regarding Brain Injury Rights Group Ltd.'s trial counselor's unexpected emergency regarding family illness." The declaration is unclear which attorney is unavailable or if the request is based upon the unavailability of attorney Ruth. As attorney Ruth is the only California licensed attorney of record for Student, and OAH does not permit the unlicensed practice of law, Student's request is insufficient to establish good cause for a continuance. If the request was intended to pertain to the unavailability of attorney Ruth, Student may resubmit a more clearly written request.

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.

IT IS SO ORDERED.

Paul H. Kamoroff
Paul H. Kamoroff (Dec 10, 2021 09:47 PST)

Paul H Kamoroff

Administrative Law Judge

Office of Administrative Hearings