

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 2021090707

ORDER GRANTING REQUEST FOR CONTINUANCE AND
SETTING DUE PROCESS HEARING

DECEMBER 10, 2021

On December 7, 2021, Elk Grove filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter, concurrently with a motion to consolidate, the latter of which is addressed in a separate order. On December 10, 2021, Student opposed the request to continue, asserting that Student's attorney and Student's witnesses were ready to proceed to 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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Elk Grove first requested a continuance at the November 8, 2021 prehearing conference, which OAH granted on the same date. OAH held the continued prehearing conference on November 29, 2021. OAH confirmed the hearing dates for December 14, 15, and 16, 2021. OAH also ordered that OAH would not consider any further continuances absent a showing by sworn declaration of good cause.

Elk Grove's second continuance request includes a declaration by its counsel asserting that its counsel is currently in a hearing in another OAH matter, OAH case number 2021090903. That matter is scheduled for one additional hearing day on November 15, 2021, which conflicts with the current hearing dates in this matter.

Student opposes the request to continue and has requested that the matter proceed to hearing as scheduled.

Elk Grove has established good cause to continue this matter, for the time period while its attorney is in hearing in OAH case number 2021090903. However, Elk Grove has not established good cause for a three week continuance.

Good cause having been shown, the motion is granted and all hearing dates are vacated. The matter is continued to December 21, 22, and 23, 2021, and continuing day to day at the discretion of the hearing administrative law judge. Any further continuance requests will be addressed by the hearing ALJ on the first day of hearing.

IT IS SO ORDERED.

Adrienne L. Krikorian

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Administrative Law Judge

Office of Administrative Hearings