

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT.
OAH CASE NUMBER 2021070856

ORDER DENYING REQUEST FOR CONTINUANCE

JANUARY 05, 2022

On January 4, 2022, Student filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter for medical reasons, as stated below. OAH did not receive a response to the motion from Etiwanda.

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).)

On August 25, 2021, the parties filed a joint request for mediation and continuance of the prehearing conference, referred to as PHC, and hearing dates to November 19, 2021, January 7, 2022 and January 19 and 20, 2022, respectively. On August 26, 2021, OAH granted the parties' request. On January 3, 2022, Student filed a motion for leave to amend. On January 5, 2022, OAH denied the motion. On January 4, 2022, Student filed a motion for continuance and a motion for consolidation, both seeking a continuance in the event the motion to amend, which would effectively continue the matter, was denied.

Student seeks a continuance on the ground that Student currently has a preoperative appointment on January 24, 2022 and neurosurgery on January 27, 2022. Student may also have orthopedic surgery in late April or early May 2022. Student's counsel also seeks a continuance on the ground that she will likely undergo surgery, which will likely occur by the end of January or early February 2022.

Student's motion fails to state good cause for a further continuance for several reasons. First, Student has not shown unavailability for the dates currently set for

hearing. Student's surgery is scheduled for the week after the due process hearing begins. Student's counsel has not shown unavailability for the week of hearing as she does not have any procedures scheduled on January 19 or 20, 2022.

Second, State and federal law require prompt disposition of IDEA due process hearings, as evidenced by the rule for issuance of decisions within 45 days of receipt of a request for due process hearing, pending resolution sessions and continuances. Student here agreed to an extensive initial continuance of the matter on August 25, 2021. Lengthy continuances invite the risk of changing circumstances, such as requiring medical care in the time of COVID-19. Given the ebb and flow of COVID-19 cases throughout the pandemic, there is no certainty that Student's medical procedures will go forward on currently scheduled dates and less certainty regarding the scheduling of potential future medical procedures.

Third, granting a continuance to either the month of March or early May 2022, as Student requested, does not resolve the problem of setting the hearing around medical procedures which may be but have not yet been scheduled. Student has no way of knowing with certainty his recovery time, the need for follow-up procedures or appointments or whether potential future procedures will be scheduled as currently anticipated.

Fourth, on balance, additional facts and circumstances here do not support good cause for a further continuance. The proximity of the hearing date means that witnesses have been scheduled, documents subpoenaed, and hearing preparation well underway. The length of the requested continuance would make this matter eight to ten months old, assuming a further continuance due to changing medical needs was not requested.

Fifth, as noted in the order denying Student's motion for leave to amend, over the passage of time, witnesses to once current events become unavailable and their memories fade. Student's claims reach back to Etiwanda's November 1, 2018 psychoeducational assessment, heightening such risks.

Finally, other means to address the problem giving rise to the request exist. (See, Ed. Code, §§ 56505, 56505.1.) Proceeding to hearing on the dates currently set more appropriately balances the need for prompt disposition of FAPE claims with the availability of parties and counsel as the matter is heard.

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.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings