

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 2021120803

ORDER GRANTING REQUEST FOR CONTINUANCE OF

DUE PROCESS HEARING

JANUARY 24, 2022

On December 23, 2021, Parents on behalf of Student filed a Request for Due Process Hearing with the Office of Administrative Hearings naming San Marcos Unified School District, referred to as San Marcos. The Office of Administrative Hearings is referred to as OAH.

On January 4, 2022, San Marcos filed a Response to Due Process Complaint. On January 19, 2022, San Marcos filed a Request to Continue the due process hearing based upon the unavailability of counsel on the scheduled hearing dates of February 8, 9 and 10, 2022. On January 21, 2022, Student opposed the Request to Continue.

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).)

San Marcos' Request to Continue is supported by a sworn declaration by San Marcos' attorney confirming they are scheduled for due process hearing in an earlier filed matter pending before OAH on the same dates as the hearing set in this matter. In the event of a scheduling conflict, OAH's policy is to hear earlier filed cases first. Further, San Marcos' counsel verified they are unavailable for the due process hearing until March 1, 2 and 3 due to other scheduling conflicts. No prior continuances have been granted in this matter. Student's main objection to the continuance request is that San Marcos is represented by a large law firm and Student believes another

attorney should be required to represent San Marcos, notwithstanding the unavailability of lead counsel. Student did not establish that he would be prejudiced by a continuance of the hearing in this matter.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is granted for good cause. All dates are vacated. This matter will be set as follows:

Prehearing Videoconference will be held on February 25, 2022, at 1:00 pm.

Due Process Hearing by Videoconference will be held on March 8, 9 and 10, 2022. The hearing dates requested by San Marcos are unavailable due to OAH's state-wide conference the week of March 1 through 4, 2022. The hearing shall begin at 9:30 am on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or

subpoena a witness. Prehearing Videoconference statements and motions are due to OAH no later than three business days before the Prehearing Videoconference or with evidence of good cause why it was not possible to file the motion by that date.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings