

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:
PARENT ON BEHALF OF STUDENT,

and

MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT,
OAH CASE NUMBER 2021100658
OAH CASE NUMBER 2021100595

ORDER DENYING REQUEST FOR CONTINUANCE

FEBRUARY 3, 2022

On February 1, 2022, Student filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter, based upon the unavailability of Student's counsel due to representation in a hearing beginning February 8, 2022, estimated to require five to eight days to complete. Student asserts that the ongoing hearing will likely conflict with the hearing in the present matter, currently scheduled to begin on February 15, 2022. On February 3, 2022, Monterey Peninsula Unified School District, called Monterey, filed an opposition.

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. Monterey opposes the motion to continue based on its contention that this hearing would take precedence over Student's counsel's other case which was filed after the present matter. Secondly, Monterey opposes the continuance as Student's asserted unavailability is speculative. After consideration, the motion to continue is denied. Student's counsel's asserted unavailability is speculative at this time. An ongoing hearing would take precedence over the present matter, even if later filed. However, it is unknown whether the hearing will conclude or otherwise resolve before the present hearing begins. Accordingly, Student's request for continuance is denied

without prejudice. Student may request a continuance if an actual conflict with the present hearing is established.

All prehearing conference and hearing dates are confirmed and shall proceed as calendared.

IT IS SO ORDERED.

Rita Defilippis

Rita Defilippis

Administrative Law Judge

Office of Administrative Hearings