

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

ROSEVILLE CITY ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2021100203

ORDER GRANTING REQUEST FOR CONTINUANCE AND
SETTING DUE PROCESS HEARING

MARCH 2, 2022

On March 2, 2022, the parties filed with the Office of Administrative Hearings, referred to as OAH, a joint request to continue this matter, based upon an unexpected delay in completing and reviewing independent educational assessments.

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. Here, the sworn declaration of Student's counsel states that the parties agreed that Student's independent educational program, or IEP, team would review independent educational assessments in February 2022, after which the parties anticipated entering into an informal resolution without the need of going to hearing. However, due in part to Student contracting COVID-19, the assessments were delayed, and the IEP team meeting to review assessments is currently scheduled for March 25, 2022. The parties jointly seek a 60-day continuance to May 17, 2022 in order to complete the assessment review and engage in post-assessment settlement negotiations.

The unexpected delay in assessment and review is a significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing

and constitutes good cause for a short continuance. The joint request is granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference will be held on May 9, 2022, at 1:00 PM.

Due Process Hearing will be held on May 17, 2022 through May 19, 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 conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings