

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
  
STUDENT,

v.

HESPERIA UNIFIED SCHOOL DISTRICT.  
  
OAH CASE NUMBER 2022010449

ORDER DENYING  
  
STUDENT'S SECOND REQUEST FOR CONTINUANCE

MARCH 1, 2022

On March 1, 2022, Student filed with the Office of Administrative Hearings, referred to as OAH, a second request to continue this matter, based upon one witness being out-of-state. On March 1, 2022, Hesperia Unified School District opposed the request based upon Student's lack of diligence and failure to establish the witness is unable to appear by videoconference, although out-of-state. Further, Student's attorney failed to meet and confer with Hesperia's attorney about any mutually agreeable dates for any continuance.

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. The request is:

Denied. All hearing dates are confirmed and shall proceed as calendared. The continuance request is denied because Student has been aware of the due process hearing dates since the Scheduling Order was issued on January 19, 2022. Student failed to demonstrate his attorneys used reasonable diligence to procure the specific witness, who was an independent evaluator in March 2021, for testimony on the dates scheduled for hearing. Student failed to demonstrate why, despite being in another State, the witness would not be able to appear at the videoconference hearing, either

with video, audio only, or by telephone. Student failed to demonstrate the witness would not be available on another date shortly after the three dates currently scheduled, such that the hearing could begin with other witnesses and this specific witness's testimony could be scheduled later in the hearing. Finally, during the prehearing conference on the day before Student filed his request for a continuance, uncertainty about the witness's location and availability was discussed with the undersigned Administrative Law Judge, called an ALJ, and Hesperia's attorney. The ALJ explicitly afforded Student's attorney multiple opportunities, off and on the record, to request a continuance, and Student declined to do so. The ALJ reviewed the reasons Student's first request for a continuance due to asserted unavailability of undefined witnesses was denied on February 24, 2022, for failure to state good cause and failure to meet and confer with Hesperia's attorney. The ALJ invited Student's attorney to meet and confer with Hesperia's attorney, during the PHC, regarding possible mutually available dates, should Student seek a continuance, and Student's attorney declined to do so. Student's motion indicates no attempt was made to meet and confer with Hesperia regarding the request for a continuance, as required, and for this additional reason, Student's second request for a continuance is denied.

IT IS SO ORDERED.

*Kara Hatfield*

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings