

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

ETIWANDA SCHOOL DISTRICT,

OAH CASE NUMBER 2022010714

OAH CASE NUMBER 2022010599

ORDER GRANTING REQUEST TO CONTINUE DUE PROCESS
HEARING

MARCH 16, 2022

On March 11, 2022, Etiwanda School District filed with the Office of Administrative Hearings, referred to as OAH, a request to continue the hearing of this matter from its present dates of March 22 through 24, 2022, to May 23, 24, and 25, 2022. Student opposed the request, and the parties argued the motion at the March 14, 2022 prehearing conference in the matter, after which the administrative law judge took the matter under submission.

Etiwanda established good cause at the prehearing conference for the late filing of its request for continuance. Etiwanda's counsel declared Etiwanda had electronically

filed and served the request for continuance on March 7, 2022, and Student's counsel confirmed she had received the request for continuance, with completed proof of service, on March 7, 2022.

Etiwanda requested the continuance of the March 22 through 24, 2022 dates due to the unavailability of some of its employees during Etiwanda's spring vacation, and to accommodate a vacation by Etiwanda's counsel to attend a significant family event. Etiwanda proposed May 3, 2022 as its first available date for hearing, with its counsel being unavailable until then due to being the attorney of record in hearings in four other matters scheduled before OAH for the weeks of March 28, 2022 and April 4, 11, and 18, 2022, and a pre-paid vacation scheduled for the week of April 25, 2022.

Student did oppose a short continuance of the due process hearing, but objected that the requested six-week continuance would prejudice Student by delaying OAH's decision and the possible relief to Student until after the end of Etiwanda's 2021-2022 regular school year, which ends May 26, 2022.

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. Etiwanda has shown good cause for a short continuance of the due process hearing in this matter. The request is:

Granted. The present hearing dates are vacated. The continuance request is granted as of the date of this Order. This matter will be set as follows:

Due Process Hearing will be held on March 29 and 30, 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. The first day of hearing for purposes of calculating deadlines for the service of exhibits and final witness lists is March 29, 2022. Timely uploading electronic hearing exhibits five business days before the first day of hearing constitutes that party's timely exchange of evidence on each other in compliance with Education Code section 56505, subdivision (e)(7).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Robert G. Martin". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings