

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

CHULA VISTA ELEMENTARY SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2022020547

ORDER GRANTING REQUEST FOR CONTINUANCE OF DUE
PROCESS HEARING

MARCH 16, 2022

On March 14, 2022, Student filed with the Office of Administrative Hearings, referred to as OAH, a request for a "short continuance" of the hearing in this matter, then set for March 15, 16 and 17, 2022. Student's request, submitted under penalty of perjury, was based on Student's representation the parties had reached a settlement in principle on March 9, 2022, the completion of which was delayed by the subsequent hospitalization of Student's attorney, with bedrest prescribed until March 16, 2022.

Chula Vista Elementary School District, called Chula Vista, objected to the timing of Student's request, and the and lack of evidence sufficient to establish good cause for

a continuance. However, Chula Vista agreed the parties were working to finalize a settlement, and agreed to a one-day continuance of the hearing date.

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. Although continuing settlement negotiations are not good cause for a continuance, the illness of Student's attorney does constitute good cause. Student's request is:

Granted on March 14, 2022, with notice given to the parties. The March 15, 16 and 17, 2022 hearing dates were vacated, and this matter is set as follows:

Due Process Hearing will be held on March 22, 23 and 24, 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.

A handwritten signature in black ink, appearing to read "Robert G. Martin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings