

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
PARENTS ON BEHALF OF STUDENT,

V.

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022020679

ORDER DENYING REQUEST FOR CONTINUANCE

MARCH 22, 2022

On February 18, 2022, Student filed a Request for Due Process, referred to as a complaint, with the Office of Administrative Hearings, naming San Bernardino City Unified School District. The Office of Administrative Hearings is referred to as OAH. OAH scheduled the prehearing conference for March 28, 2022 and the due process hearing for April 5 through 7, 2022.

On March 15, 2022, San Bernardino City Unified filed a request to continue the hearing in this matter to May 10 through 12, 2022. The request is made on the grounds that its attorney is scheduled for another hearing in an earlier filed case involving the same school district on the currently scheduled hearing dates. According to the supporting declarations, Attorney Kinsey is the only attorney who has worked on this matter and familiar with this case, and Kinsey has other hearings set during the weeks of

April 12, April 26, and May 3, 2022. In addition, the school district representatives are unable to participate in two hearings scheduled on the same dates and the only person authorized to serve as district representative at due process hearings is unavailable for a due process hearing on April 19 through 21, 2022 due to prescheduled district-wide projection meetings, site leader meetings with cabinet, a student leadership meeting, and community meetings.

On March 18, 2022, OAH received Student's opposition. Student argues that the request is without good cause because Attorney Kinsey works at a large firm and should not have accepted the representation of so many cases if she is unable to appear at the scheduled hearings. In addition, Kinsey should have anticipated these scheduling conflicts and asked her firm to assign other counsel to these cases. Student also argues that the various meetings which are claimed to render the authorized school district representative unavailable during week of April 19, 2022 do not constitute good cause to continue the hearing in this matter. Student claims a continuance of the hearing would be prejudicial but does not provide a comprehensive explanation. Student also asserts that the continuance request is premature because scheduling is traditionally addressed at the prehearing conference, and that the request is based on speculation the other cases will actually proceed to hearing when they may not.

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. San Bernardino City Unified has failed to establish good cause for the requested continuance. Specifically, although Attorney Kinsey has other hearings scheduled to begin on April 5, April 12, April 26 and May 3, 2022, the school district has failed to address the likelihood of each of the other matters proceeding to hearing on the currently scheduled dates. In particular, in at least three of these matters, OAH was notified that the scheduled mediation was cancelled to focus on finalizing a settlement agreement. In addition, Respondent's papers have failed to establish that the prescheduled meetings its authorized representative listed in the representative's declaration, should preclude OAH from setting the matter for hearing during the week of April 19, 2022. There has been no showing why these meetings should be given priority; specifically, why its authorized due process representative is required to attend these meetings or why a proxy could not be sent in that person's stead.

All prehearing conference and hearing dates are confirmed and shall proceed as calendared. San Bernardino City Unified may renew its request for a continuance. The parties are ordered to meet and confer prior to any party filing or otherwise making a new request which seeks to continue the hearing. Any new request shall detail those meet and confer efforts and address the other deficiencies in the papers noted in this Order. Any subsequent continuance request can also be addressed by the Administrative Law Judge presiding over the March 28, 2022 prehearing conference.

IT IS SO ORDERED.

*Laurie Gorsline*

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings