

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
  
PARENTS ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024050520

ORDER DENYING REQUEST FOR CONTINUANCE

JUNE 13, 2024

On May 10, 2024, Student filed a request for a due process hearing with the Office of Administrative Hearings, called OAH, naming San Juan Unified School District. Also on May 10, 2024, Parent filed requests for due process on behalf of two of Student's siblings, each naming San Juan, as respondent. This instant case was assigned first. On June 7, 2024, San Juan filed a motion to continue the hearing in the present matter because the currently scheduled hearing conflicts with the hearing dates of Student's siblings, currently scheduled for hearing on the same dates, and the unavailability of San Juan's counsel, Attorneys Marcella Gutierrez and Tilman Heyer, on the currently scheduled dates for hearing.

San Juan asserts Attorney Gutierrez is unavailable as she is representing a district in a separate case, OAH Case Number 2024040606, which was filed before Student's

case, and which is scheduled for hearing on the same dates as Student's case. San Juan asserts Attorney Tilman is unavailable as he will be on paternity leave on the first two days of the currently scheduled hearing. On June 11, 2024, Student filed an opposition asserting that all three of the sibling cases should go forward so that Parent can obtain remedies expeditiously, that the claimed conflict for Attorney Gutierrez is speculative, and that no declarations under penalty of perjury were provided to establish San Juan's counsels' asserted unavailability.

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, or other excusable circumstances;
- A party is unavailable because of death, illness, or other excusable circumstances;
- A party's attorney is unavailable because of death, illness, or other excusable circumstances;
- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice;
- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a

reasonable opportunity to prepare for trial regarding the new party's involvement;

- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

San Juan did not establish good cause to continue the hearing in the present matter. First, although all three siblings' cases were filed on the same date, Student's case was the first in time filed on May 10, 2024. As such, Student's case takes priority over Student's sibling cases and shall proceed to hearing first.

Second, San Juan's request for continuance based on the alleged unavailability of Attorneys Gutierrez and Tillman is also rejected. San Juan did not include any sworn declarations of Gutierrez or Tilman to establish their unavailability. Further, even if they did, Attorney Andra Green represented the respondent school district at the June 10, 2024, prehearing conference in the conflicting case. San Juan's request for continuance did not mention Attorney Green or assert the unavailability of Attorney Green to represent the other respondent school district at hearing in the allegedly conflicting matter. Nor did the Order Following Prehearing Conference in that matter contain any information regarding Attorney Greens' unavailability. Accordingly, San Juan's request for continuance is denied for lack of good cause. All prehearing conference and due process hearing dates are confirmed and will proceed as calendared.

IT IS SO ORDERED.

*Rita Defilippis*

Rita Defilippis

Administrative Law Judge

Office of Administrative Hearings