BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN BENITO HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021030859

ORDER GRANTING REQUEST FOR VIDEOCONFERENCE CONTINUANCE OF DUE PROCESS HEARING

MAY 17, 2021

On May 14, 2021, Student's attorney Sheila Bayne filed a request for a hearing continuance with a declaration stating that she would be undergoing a medical procedure and would need recovery time. Attorney Bayne also did not meet and confer with opposing counsel before filing the motion and did not propose alternative hearing dates. San Benito High School District, called San Benito, filed an opposition to the hearing continuance, and alternatively proposed that the hearing be continued for only one-week to May 25, 2021. San Benito argued that Student's motion did not include information on why the motion could not be timely filed, *e.g.* that the medical procedure was unknown to her at the time of the May 10, 2021 prehearing conference, called a PHC. As further cause for declining the hearing continuance, San Benito

argued that at the May 10, 2021 PHC, attorney Bayne specifically declined a hearing continuance when the administrative law judge, called an ALJ, asked if Bayne would like a hearing 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. Because the complaint is filed recently, and this is a first continuance request, OAH grants the continuance so attorney Bayne may attend to her medical needs. OAH gives Bayne the benefit of the doubt that the medical procedure was not scheduled before the May 10, 2021 PHC, and was emergency in nature. All dates are vacated. This matter will be set as follows:

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

The hearing will take place on June 2, and 3, 2021, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. Additional hearing days will be discussed with the ALJ at the start of the hearing. This matter shall take precedence over later filed cases.

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.

All motions in this case shall be accompanied by a declaration under the penalty of perjury that the attorneys have met and conferred before the motion is filed, and a statement, in compliance with the May 10, 2021 Order Following PHC, as to why the motion could not be timely filed three business days before the May 10, 2021 PHC. An order to show cause as to why sanctions should not issue will be set if the parties do not comply with this order, and the May 10, 2021 Order Following PHC.

IT IS SO ORDERED

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings