BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023050768

ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

JULY 28, 2023

On May 19, 2023, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Fremont Unified School District, called Fremont. On June 7, 2023, OAH granted Student's request for a hearing continuance so Parent could prepare for a separate legal matter in Superior Court. Student requested to continue the hearing to July 17, 2023, or later, and Fremont requested to continue the hearing to the week of August 22, 2023. OAH continued the matter to August 22, 23, and 24, 2023. On June 16, 2023, OAH granted Student's motion to amend the due process hearing request, which reset the hearing dates to the week of August 8, 2023.

On July 26, 2023, Fremont filed a request to continue the due process hearing back to the week of August 22, 2023, the dates of the first hearing continuance because its attorney, Elizabeth Schwarz, is unavailable for hearing the week of August 8, 2023. Fremont contends Attorney Schwartz will be in hearing the week of August 8, 2023, in OAH Case No. 2023050030, an earlier filed matter. Further, Fremont contends its Director of Special Education Frances English is unavailable on August 9, 2023, because she will be leading a previously scheduled training. Fremont's continuance request is supported by a declaration under the penalty of perjury from Attorney Schwartz.

On July 28, 2023, Parent opposed Fremont's request to continue the hearing back to the week of August 22, 2023, to avoid reissuing subpoenas. Student also proposed that another attorney from Attorney Schwartz's firm handle the hearing, and the hearing to go dark on August 9, 2023, in Ms. English's absence.

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).)

OAH considered the continuance request for good cause. Student's opposition was six days late, and did not offer a reasonable explanation of why the hearing should not revert back to the week of August 22, 2023, the dates of the first hearing continuance.

Fremont demonstrated good cause for a brief hearing continuance as its attorney is unavailable because of an earlier filed matter also scheduled for hearing on the same dates as the hearing in this case. This matter was recently filed in May 2023 and amended in June 2023. Fremont seeks to continue the hearing back to the dates of the first hearing continuance, before the amended complaint reset the hearing to dates that conflict with the hearing dates in an earlier filed OAH matter.

Fremont's continuance request is granted. The prehearing conference, called a PHC, and hearing are continued as follows:

PHC, HEARING DATES, TIMES, AND LOCATION

The PHC is continued to August 14, 2023, at 3:00 PM.

The hearing will take place on August 22, 23, and 24, 2023, 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. PHC statements and motions are due to OAH no later than three business days before the PHC or with a showing of good cause why it was not timely filed.

PARTICIPANT INFORMATION SHEETS FOR THE PHC AND DUE PROCESS HEARING MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

OAH is authorized to conduct PHC and due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the PHC and due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered

good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings