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 2020020631

ORDER DENYING REQUEST FOR CONTINUANCE AND ORDERING STUDENT TO COMPLY WITH ORDERS TO UPLOAD EVIDENCE INTO CASELINES

JUNE 22, 2020

On June 22, 2020, Student filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter alleging that she requires more time to obtain student records from Fremont Unified School District, in order to prepare for hearing. OAH has not received an opposition.

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).)

Student seeks a continuance, alleging she needs more time to obtain and review her education records in order to prepare for hearing. Student alleges that she requested her "school records" in subpoenas duces tecum issued to various Fremont employees, school board members, and attorneys representing Fremont and refers, generally, to OAH's order granting Fremont's motion to squash the subpoenas. Student alleges the order impairs her ability to obtain her own education records.

Student has not shown good cause for a continuance on the eve of the due process hearing. Student has not demonstrated that she could not obtain her education records by making a timely request to Fremont to produce them. She has not demonstrated that, despite diligent efforts, she has not been able to obtain material evidence for hearing.

Parents or adult students are entitled to request copies of the educational records, relating to the student in question, that are maintained by the school district. (Ed. Code, § 56504; *Burnett v. San Mateo Foster City School Dist.* (9th Cir. 2018) 739 Fed. Appx. 870, 873.) The parties are also entitled to disclosures of any evidence an opposing party plans to introduce at hearing 5 business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).)

Student has had several months to request and obtain education records from Fremont. Student has received Fremont's timely disclosure of evidence they intend to introduce at hearing. Nothing further is required under the IDEA.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Denied. The hearing shall proceed as calendared.

Student shall immediately upload her evidence for hearing, into CaseLines as previously ordered during the Prehearing Conference held on June 15, 2020, and as ordered in OAH's Amended Order Setting Procedures for Filing Exhibits Electronically Using CaseLines served on the parties on June 5, 2020 and June 17, 2020.

IT IS SO ORDERED.

DocuSigned by:
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Cole Dalton

Administrative Law Judge

Office of Administrative Hearings