BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MODESTO CITY SCHOOLS.

OAH CASE NUMBER 2022080550

ORDER DENYING REQUEST FOR CONTINUANCE

SEPTEMBER 23, 2022

On August 19, 2022, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, called OAH, naming Modesto City Schools. Also, on August 19, 2022, OAH issued a scheduling order setting the prehearing conference for September 26, 2022, and the due process hearing for October 4, through 6, 2022. On September 19, 2022, Student filed a Motion to Continue the prehearing conference citing unavailability of Student's attorney due to a religious holiday. Student requested that OAH hold the prehearing conference on September 23, 2022. Modesto did not file a response to Student's motion.

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 holds prehearing conferences at least five business days before the first day of the due process hearing. OAH only holds prehearing conferences on Mondays and Fridays. Once a party files a motion with OAH, OAH allows the responding party three business to file a response to the motion. OAH does not issue an order in response to a motion until three business after OAH receives the motion or once the other party or parties respond to the motion, whichever comes first.

OAH has reviewed the request to continue the September 26, 2022 prehearing conference for good cause and considered all relevant facts and circumstances. Student did not establish good cause to hold the prehearing conference on September 23, 2022. While OAH has found the observance of a religious holiday good cause to continue a

prehearing conference, Student's delay in filing its request for continuance prevents OAH from continuing the prehearing conference in this case. OAH issued the scheduling order a month before Student requested its continuance. Thus, Student had sufficient time to make its request. Because Student waited until September 19, 2022 to make its request and because Modesto did not respond to the motion, the earliest OAH could rule on the motion was September 23, 2022, the same date Student requested to hold the prehearing conference.

The due process hearing in this case is scheduled to start on October 4, 2022. Therefore, the only date OAH can hold the prehearing conference that is at least five business days before the first day of hearing is September 26, 2022. Accordingly, Student's request to continue the prehearing conference is denied.

IT IS SO ORDERED.

Tara Doss

Tara Doss

Administrative Law Judge

Office of Administrative Hearings