BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

STANISLAUS UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2022040227

ORDER DENYING REQUEST FOR CONTINUANCE WITHOUT PREJUDICE

MAY 5, 2022

On April 27, 2022, Student filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter, based upon Student's attorneys also being set for hearing on the same dates in OAH Case No. 2022030676, which was filed before this case. Stanislaus's attorneys also represent the school district in OAH Case No. 2022030676.

On May 2, 2022, Stanislaus Union School District opposed the request based upon its argument this case is actually the earlier-filed matter because Student filed almost identical claims against Stanislaus in a previous case filed in December 2021. Student withdrew that case without prejudice, with Stanislaus's consent, on the first day

of hearing on April 5, 2022, in protest of the Administrative Law Judge's exercise of his authority and discretion under Education Code section 56505.1, subdivision (h), to limit the length of the due process hearing based upon the issues to be heard, the complexity of facts to be proven, the ability of the parties or their representatives to present their respective cases, and the parties' estimates of the time needed to present their cases. Although irrelevant to the determination of Student's request for continuance, OAH notes that Student incorrectly represents in his request for continuance that the Administrative Law Judge limited the hearing to three days. The record reflects the Administrative Law Judge afforded each side three days, for a total of six days of hearing.

Stanislaus asserts the fact that this case is a nearly identical refiling of the prior claims makes it the older case for purposes of determining which matter has priority for hearing.

Further, Stanislaus argues it previously prepared for the due process hearing of Student's claims, and has again begun to prepare for the hearing, such that postponing preparation for hearing dates in June 2022 would impose additional expense on, and therefore prejudice, Stanislaus.

On May 3, 2022, Student filed a reply to Stanislaus's 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).)

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

Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. The continuance request is denied as premature. The prehearing conference in OAH Case No. 2022030676 is set for Friday May 13, 2022, at 3:00 PM. The prehearing conference in this case is set for Monday May 16, 2022, at 10:00 AM. At this time, there is only a potential conflict in the hearing dates, and it is too early to determine there is an actual conflict in the hearing dates for the two matters. Resolution of one, the other, or both matters is still possible, and a continuance of either matter still might be sought for any other good cause. The parties will continue to evaluate both cases and shall be prepared to discuss with the Administrative Law Judges at the prehearing conferences in both cases the likelihood of an actual conflict in hearing dates. However, OAH Case No. 2022030676 was filed

before this matter and takes precedence for hearing. The parties are encouraged to meet and confer regarding mutually available dates for any potentially necessary continuance request.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings