BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019090067

ORDER DENYING REQUEST FOR CONTINUANCE

APRIL 22, 2020

On April 20, 2020, Redondo Beach Unified School District and Torrance Unified School District filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter, based upon the impact of the Covid-19 pandemic. On April 21, 2020, Student opposed the request, arguing that Redondo Beach and Torrance did not demonstrate good cause for a 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. The request is:

Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. Redondo Beach and Torrance have not shown sufficient good cause to justify the requested continuance.

Redondo Beach and Torrance argue that more than two month's continuance is necessary because their preparation for hearing has been made more difficult and that neither an in-person or videoconference hearing is "plausible or efficient" at this time. Redondo Beach and Torrance include a declaration setting out a number of supporting facts.

The declaration states that all of Redondo Beach and Torrance's schools are currently closed and many of their staff members are working from home. Those

workers may find it difficult to find a quiet and private place from which to give telephonic testimony, and their availability on the scheduled hearing dates is "unknown at this time." Redondo Beach and Torrance are unsure how they will provide "cover" for teachers providing distance learning when they testify. Further, Redondo Beach and Torrance are unsure how they will compile and distribute their evidence binders for the hearing, which is currently expected to consist of 200 or more pages. They argue that delay will not prejudice Student because she is already privately placed. For those reasons, Redondo Beach and Torrance seek to move the start of the hearing from May 7, 2020, to July 28, 2020.

Student opposes the motion, arguing that the delay in resolution of her case is unnecessary and will result in hearing a case filed in September 2019 to be heard in late July 2020. Student argues that closure of school sites does not justify denial of her right to a speedy resolution of her case. Student notes that Redondo Beach and Torrance have presented only general arguments that things may be difficult for the witnesses, and contends that testifying in this matter can be arranged, even outside of the witnesses' homes, without endangering the witnesses' safety. Delay will prejudice Student because her parents bear the cost of her private placement and granting a continuance is likely to cause any decision in this matter to issue after the start of the upcoming school year. Parents would then have to bear the burden of funding the new school year amid uncertainty about Student's on-going education.

Student's arguments are persuasive. Although the disruption caused by the Covid-19 pandemic has changed procedures and require additional work, the greater difficulty involved does not justify stopping this proceeding until the crisis passes. Redondo Beach's and Torrance's counsel has not stated that she does not have access to necessary documents for use at hearing. At most, she has stated that it will be

difficult to add material to Redondo Beach's and Torrance's evidence binders. The fact that many of Redondo Beach's and Torrance's employees are working remotely implies that others are not, and counsel has not stated that she has no access to school records or that there are records she does not have that she needs for hearing. Similarly, her opinion that some witnesses may find it difficult to testify or that Redondo Beach and Torrance are unsure how they will compile and distribute their evidence binders is not good cause for a continuance. Abstract concerns are not supporting facts.

The Administrating Law Judge hearing this matter will work with the parties to facilitate witness testimony during the hearing. In addition, the Office of Administrative Hearing has issued orders setting out the management of electronic witness binders for use at hearing, which addresses Redondo Beach's and Torrance's concerns over compiling and distributing their evidence. Given Student's concern about a delay in this matter affecting her educational plan for the upcoming school year, sufficient good cause does not exist to justify a continuance.

The continuance request is denied.

IT IS SO ORDERED.

DocuSigned by:
Chris Butchko
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Chris Butchko

Administrative Law Judge

Office of Administrative Hearings