BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

MAGNOLIA PUBLIC SCHOOLS,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2023010438

ORDER GRANTING REQUEST FOR CONTINUANCE OF DUE PROCESS HEARING

MARCH 13, 2023

On March 8, 2023, Student filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter, based upon Parent's unavailability due to mandatory new employee training. On March 10, 2023, Magnolia Public Schools opposed, arguing Parent's request is untimely filed and Parent has failed to demonstrate good cause for the request. Parent filed a response to Magnolia Public School's opposition on March 13, 2023.

Magnolia Public Schools, in a separate motion, also requested a delayed start to the due process hearing on March 8, 2023, because it's counsel is presenting at the

California Charter School Conference. Parent did not respond to Magnolia Public Schools's motion.

It should be noted, Parent has filed a separate request for due process hearing on January 26, 2023, OAH case number, 2023010808. That matter is not consolidated with the instant case and any continuance orders are only applicable to this case.

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:

Granted. All dates are vacated. Here, both parties requested a short continuance. While, Magnolia Public Schools opposes the length of Parent's request, they, too, had requested a continuance of the start of the due process hearing. Parent has stated she is unable to participate in the due process hearing due to mandatory new employee onboarding training. Parent established good cause for a brief continuance.

This matter will be set as follows:

A Prehearing conference was held on March 6, 2023. A second one will not be scheduled.

Due Process Hearing will be held on April 11, 12, and 13, 2023. The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date.

IT IS SO ORDERED.

Tiffany Gilmartin
Tiffany Gilmartin (Mar 13, 2023 10:54 PDT)

Tiffany Gilmartin
Administrative Law Judge
Office of Administrative Hearings