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Parties Must Show Good Cause to Continue Special Education Due Process Hearings

Starting January 1, 2019, local education agencies (“LEAs”) and parents may find it more difficult to continue special education due process hearings. On September 28, 2018, Governor Jerry Brown signed Assembly Bill 2580 (“AB 2580”), which amends Education Code section 56505 to require administrative law judges (“ALJ”) to apply a specific standard in determining whether to continue due process hearings. AB 2580 also specifically authorizes ALJs to grant a second or subsequent continuance for good cause or for any other purpose at their discretion.

Existing law authorizes an ALJ to continue a due process hearing “upon a showing of good cause.” However, existing law did not define “good cause.” The Office of Administrative Hearings (“OAH”), though, historically interpreted the “good cause” standard to mean the circumstances set forth in Rule 3.1332(d) of the California Rules of Court. That Rule outlines specific circumstances that may indicate “good cause” such as when:

- A party, essential witness, or counsel is unavailable due to death, illness, or “other excusable circumstances”;
- Counsel is substituted where required “in the interests of justice”;
- A new party is added and if any party needs an opportunity to prepare for hearing as a result of the addition of the new party; or
- A “significant, unanticipated change in the status of the case” has occurred, which prevents the case from being ready for hearing.

It also identifies other factors the ALJ must consider when determining whether to continue the hearing, including the proximity of the hearing date, the length of the requested continuance, the prejudice the parties or witnesses will suffer if the continuance is granted, and any other relevant facts or circumstances.

AB 2580 now requires ALJs to apply this rule when determining what constitutes “good cause.” Of particular importance to LEAs, one of the likely consequences of the change is that ALJs will deny requests for continuances when: (1) the parties stipulate that they require an extension because settlement negotiations are underway; and (2) a material witness who is an LEA employee will be absent because the hearing is scheduled on a day school is not in session (e.g., during summer vacation).

As a result of these changes, LEAs should consider the following:

1. Filing a request for a due process hearing when the hearing is likely to be scheduled when school is in session;
2. Opposing motions to continue that are filed by parent attorneys who are unavailable simply because they have “stacked up” their hearings by filing too many requests for due process at about the same time; and
3. Being specific and detailed in arguing good cause. For example, if a witness is not available for the hearing, establish with supporting declarations why the witness is unavailable and is crucial for a fair hearing.

If you have any questions regarding this matter, please call one of our six offices.

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