BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PANAMA-BUENA VISTA UNION SCHOOL DISTRICT.	OAH CASE NO. 2012060648 ORDER DENYING REQUEST FOR CONTINUANCE

On August 7, 2012, Student filed a request with the Office of Administrative Hearings (OAH) to continue the dates currently set for a due process hearing in this matter because her attorney, Nicole Hodge Amey, has a scheduling conflict on some of the dates currently set for hearing. The conflict exists with dates currently set for hearing in OAH Case No. 2012040020. Ms. Amey also represents the student in that case.

On August 8, 2012, the District and County opposed the request claiming that the school district in OAH Case No. 2012040020 would have no objection to continuing that case. A Declaration from Stacy Inman, attorney for the District and County in this case, 2012060648, was also filed with the opposition to Ms. Amey's request for a continuance. Ms. Amey then filed a Declaration in response to the Declaration of Ms. Inman. No continuance of the due process hearing has been requested in OAH Case No. 2012040020 since OAH continued the original due process hearing dates at a PHC held May 16, 2012.

APPLICABLE LAW

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. (See 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; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

DISCUSSION

On May 16, 2012, at a prehearing conference (PHC) in OAH Case No. 2012040020, Administrative Law Judge (ALJ) Alexa J. Hohensee, set the due process hearing in that case for August 13-16, 2012. Ms. Amey participated in that PHC and was later served with ALJ Hohensee's order following the PHC that listed the dates of hearing.

OAH sent the parties the scheduling order in this matter, OAH Case No. 2012060648, on June 18, 2012, the same date Ms. Amey filed the due process hearing request (complaint). That scheduling order set a PHC on August 8, 2012, and states that the due process hearing in this matter will begin August 14, 2012, and "shall continue day to day, Monday through Thursday unless ordered otherwise." On July 16, 2012, the parties sent OAH a request to advance the PHC from August 8 to August 6, 2012. That request, signed by Ms. Amey, states "The parties do not desire that any other dates be changed in this matter."

Before 9:00 a.m. on August 1, 2012, OAH staff telephoned Ms. Amey and left a message informing her that her PHC statement was due by close of business that date for the PHC scheduled on August 6, 2012. On August 6, 2012, ALJ Adeniyi Ayoade conducted the PHC in this matter. Student still had not filed a PHC statement, although the scheduling order required it to be filed at least three business days prior to the PHC.[1] ALJ Ayoade ordered Student to serve her witness and exhibit lists on the District and County no later than close of business August 7, 2012. ALJ Ayoade noted that counsel for Student "did not establish good cause as to why no witnesses or exhibits have been disclosed. . . . [T]he attorney for Student seemed unprepared[; and] no explanation was offered to explain why a PHC statement was not filed." Ms. Amey did not file her PHC statement in OAH Case No. 2012060648 until after the conclusion of the PHC on August 6, 2012.

At no time during the PHC on August 6, 2012, did Ms. Amey mention that she had a calendar conflict with the hearing dates agreed to by the parties during the PHC of August 6, 2012. Those hearing dates are August 14-16, and August 20-22, 2012. During the PHC on August 6, 2012, Ms. Amey stated that she thought the case would be continued by the parties so mediation could be held. However, Ms. Inman stated that the District did not want

[1] Ms. Amey did not file a PHC statement in OAH Case No. 2012040020 until May 21, 2012. Although the proof of service attached to the PHC statement in that case says it was faxed to OAH and the school district's attorney on May 15, 2012, the legend at the top of each page indicates it was not faxed to OAH until May 21, 2012.

mediation.[2] Even after Ms. Inman made that comment, Ms. Amey did not disclose her calendaring conflict. Further, at PHC's parties are encouraged to continue settlement negotiations, and had the parties agreed to mediation, OAH could have set a mediation at the PHC of August 6, 2012, so the hearing would not need to be continued for that reason.

Mediation in this matter was set for July 26, 2012. On July 16, 2012, Ms. Amey told OAH staff that she wanted to cancel the mediation and she thought the parties would reschedule the date. However, in her Declaration in opposition to the request for continuance Ms. Inman states that her clients never intended to mediate, and there was no agreement to reschedule the mediation. Although Ms. Amey disputes this in her Declaration in response to Ms. Inman, she gives no details, no dates of conversations, or any information in support of her blanket statement that the parties had agreed to reschedule the mediation.

Finally, in the PHC order issued by ALJ Ayoade, the parties were ordered to file a declaration with any motion filed after the date of the PHC hearing as to why the motion was not made at or before the PHC. Ms. Amey claims that she delayed filing her request for continuance because of the timing of Ms. Inman's statement at the PHC on August 6, 2012, that her clients did not wish to mediate. However, this does not explain why she did not make her motion to continue the hearing during the PHC.

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

☒ Denied. All hearing dates are confirmed and shall proceed as calendared.

IT IS SO ORDERED.

Dated: August 9, 2012

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

[2] Mediation is voluntary. (Ed. Code § 56503.)