BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. FRESNO UNIFIED SCHOOL DISTRICT,	OAH Case No. 2012100242
FRESNO UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No 2012100291. ORDER DENYTING MOTION TO STAY REMEDIES PORTION OF BIFURCATED HEARING

On April 18, 2014, the Fresno Unified School District (Fresno) filed a motion to stay the completion of the remedies portion of the bifurcated hearing in these matters. On April 22, 2014, Student filed an opposition to the motion. On April 24, 2014, Fresno filed a reply to Student's opposition to the motion to stay.

These matters have been pending since October 2012. A hearing was held in September, October and November 2013 and an order bifurcating the liability portion of the hearing from the remedies portion of the hearing was issued on December 3, 2013. A decision in the liabilities portion of the bifurcated hearing was issued on January 23, 2014.

The liability portion of the bifurcated decision called for two assessments to be completed on Student prior to the commencement of the remedies portion of the hearing. The assessments have been completed. Two continuances have been granted as to the remedies portion of the hearing, based upon the unavailability of Fresno's lead counsel. The hearing is currently scheduled for July 17 and 18, 2014. Fresno has appealed the liability portion of the bifurcated matter to the United States District Court for the Eastern District of California and the instant motion requests a stay of the remedies portion of the hearing until the United States District Court rules on the appeal.

DISSCUSSION AND APPLICABLE LAW

In support of Fresno's motion for a stay, Fresno was unable to cite any special education statutes, regulations or any authority supporting its motion to stay the remedies

portion of the hearing. Fresno contends that the Office of Administrative Hearings (OAH) should be guided by the California Rules of Court Rule 5.515 (f), which states:

> "In ruling on a motion for a stay order, the assigned judge must determine whether the stay will promote the ends of justice, considering the imminence of any trial or other proceeding that might materially affect the status of the action to be stayed, and whether a final judgment in that action would have a res judicata or collateral estoppel effect with regard to any common issue of the included actions."

Fresno states that Rule 3.515 sets forth the grounds for granting a stay pending review of a decision. However, the Rule has nothing to do with a stay during the review of a decision. Rule 5.515 concerns the imposition of a stay in actions being considered for or affecting an action being considered for coordination. Coordination allows two or more civil actions (cases) in California Superior Courts that share common questions of fact or law, and that are pending in different counties to be joined in one court. Fresno's argument for OAH to issue a stay using Rule 3.515 as guidance is not persuasive.

Fresno also argues that a stay in the remedies portion of the hearing is warranted because the resolution of the appeal of the liability portion of the bifurcated hearing may modify or render the remedies portion of the hearing moot. Student argues in her opposition that she is entitled to a timely resolution of the matters before OAH and that it could be years before a ruling on the appeal of the liabilities portion of the hearing is completed.

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).) The Office of Administrative Hearings (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).)

OAH must render a decision in this matter within the legal timeframes set out above. There have been many continuances in this matter for good cause, based upon the requests from both parties. Staying this matter for an unknown amount of time while Fresno pursues an appeal of the liability portion of the bifurcated matters does not comport with the Individuals with Disabilities Education Act's mandate for speedy resolution of special education cases. Fresno's argument that a future modification of the liabilities portion of these matters may occur and have an effect on remedies ordered is speculative. Student is already 22 years of age and is entitled to a timely resolution of her special education claims and request for compensatory services.

ORDER

Fresno's request for a stay is denied. All dates will remain as currently calendared.

IT IS SO ORDERED.

DATE: May 2, 2014

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings