BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. GARVEY SCHOOL DISTRICT.	OAH Case No. 2014110367 ORDER DENYING REQUEST FOR CONTINUANCE

On April 7, 2015, Sharon A. Watt, attorney for Garvey School District, filed a request with the Office of Administrative Hearings to continue the dates for hearing in this matter until September 1, 2015, based upon her recent substitution as legal counsel for District. Student has not submitted a response.

Student filed this matter on October 30, 2014. On November 10, 2014, attorney Leah Smith, on behalf of District, filed a notice of representation. On November 17, 2014, Ms. Smith joined Student's attorney in requesting a continuance of this matter, which OAH granted. On February 4, 2015, Ms. Smith and Student's legal counsel filed a second continuance request due to delays in finalizing independent evaluations. On February 5, 2015, OAH granted the second continuance request and set the matter for hearing for April 21, 22 and 23, 2015, with the Prehearing Conference scheduled for 1:00 p.m., on April 13, 2015. Ms. Watt sent notification of substitution of District's legal counsel on April 3, 2015, and attempted to work with Student's legal counsel on obtaining a continuance in this matter, but received no response.

OAH denied District's continuance on April 8, 2015, as District did not establish good cause for a continuance.[1] The order stated that OAH would consider a brief continuance, which could be discussed at the April 13, 2015 Prehearing Conference.

On April 10, 2015, District filed another continuance request. In this request, Ms. Watt provided additional information why she is not available for hearing in this matter until September 1, 2015.

[1] Student responded for the record after OAH issued the April 8, 2015 order that Student opposed District's continuance request. Student has not responded to the April 10, 2015 request, but OAH presumes that Student still opposes the granting of continuance for the reasons stated in the April 8, 2015 response.

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).)

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. Ms. Watt's late substitution of legal counsel does not constitute good cause for a continuance of this matter, especially until September 1, 2015, as this matter was filed on October 30, 2014, and nearly a year would have elapsed if this matter went to hearing on the requested dates and a decision issued. Further, the stated conflicts in District's motion do not constitute good cause for a continuance as this matter has been set for hearing on the current dates since February 5, 2015. OAH will consider a brief continuance, which the parties may discuss at the April 13, 2015 PHC, if Student agrees.

IT IS SO ORDERED.

DATE: April 10, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings