BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: OAKLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	
PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017050146 ORDER DENYING REQUEST FOR CONTINUANCE

On October 11, 2017, Parent on behalf of Student filed with the Office of administrative Hearings a prehearing conference statement in which she requested a continuance of the due process hearing scheduled to begin October 17, 2017. Parent's request is not supported by a declaration under penalty of perjury. Parent requests a continuance because the Regional Center for the East Bay recently diagnosed Student with autism, and the assessor requires four weeks to finalize her draft report. Parent indicates she is unable to fund the experts that her prior counsel had retained to testify at hearing, and the testimony and report of the new assessor is necessary to refute Oakland Unified School District's reports and to determine an appropriate placement for Student.

On October 12, 2017, Oakland filed an opposition to the request supported by the sworn declaration of its counsel. Oakland opposes Parent's request because she failed to comply with OAH's October 2, 2017 Order Following Prehearing Conference which required that any motion filed subsequent to the PHC be supported by a declaration under penalty of perjury as to why the motion was not made at or prior to the PHC. Oakland also opposes the request because Parent did not establish good cause for a further continuance of this matter.

Oakland's opposition establishes that Parent was aware that Dr. Liza Bathori conducted an assessment of Student for the Regional Center and had prepared a September 20, 2017 letter stating that she had diagnosed Student with autism. Parent shared this letter with Oakland on September 20, 2017.

At the October 2, 2017 PHC in this matter, Parent did not request a continuance and did not indicate that she would be filing a request for a continuance. During the PHC, Parent relied on her former counsel's list of 35 witnesses, including 2 experts, but indicated that she was not planning on calling all of the identified witnesses.[1] That original list of witnesses did not include Dr. Bathori. Parent was ordered to file an amended witness list, identifying the witnesses she intended to call at hearing, and a list of all exhibits by October 6, 2017. Parent filed a witness list and list of exhibits on October 6, 2017. Parent did not identify Dr. Bathori as a witness and did not identify Dr. Bathori's September 20, 2017 letter or her report as proposed exhibits.

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 hearing dates are confirmed and shall proceed as calendared. This consolidated matter has been pending for more than five months. Oakland originally filed for hearing in March 2017, and Student filed her case in April 2017. Parent has known of Dr. Bathori's diagnosis of Student since at least September 20, 2017, but failed to seek a continuance or even identify Dr. Bathori as a witness until October 11, 2017, four business days prior to hearing. Parent has not established good cause to continue this matter to await the preparation of an assessment report.

Nothing in this order prevents Parent from calling Dr. Bathori as a witness during the hearing as currently scheduled or informing the administrative law judge at the time of

[1] On September 6, 2017, Parent informed OAH that Student was no longer represented by counsel and that she would be representing Student herself. Since that time, Parent represented Student during an expedited hearing on September 7, 2017, and during the October 2, 2017 PHC in the non-expedited matter.

hearing if there is a witness scheduling issue. Parent may make her own arrangements for Dr. Bathori to appear and testify at hearing, or Parent may contact OAH staff to request a subpoena for Parent to serve on Dr. Bathori, to secure Dr. Bathori's appearance.[2] Oakland may raise an objection to the testimony of Dr. Bathori at hearing, and the administrative law judge will rule on any objections at that time.

IT IS SO ORDERED.

DATE: October 13, 2017

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

[2] Parent may find it helpful to review OAH's Special Education Handbook found on the OAH website located at http://www.dgs.ca.gov/oah/SpecialEducation.aspx. This guide includes a section on subpoenas. Parent may also call OAH staff to request a copy of this guide.