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. 2013010033
FRESNO UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2012120631 ORDER DENYING REQUEST FOR CONTINUANCE

On April 30, 2013, Parent, on behalf of Student (Student), filed a request to continue these consolidated matters on the grounds that the parties have agreed to enter into negotiations to possibly reach a global settlement of all currently pending actions between the parties. On May 2, 2013, the Fresno Unified School District (District) filed a response in which it joined in Student's request, to the extent that any new due process hearing dates be set in September 2013, thereby providing relief for District's calendar in May 2013, wherein District has other matters pending, and relief during the summer break, wherein District anticipates difficulty in securing witnesses.

According to the numerous filings in these consolidated special education matters, the parties are engaged in multiple legal proceedings, outside of the matters before the Office of Administrative Hearings (OAH), that involve, in one form or another, the parties ongoing dispute over discipline of Student and Student's educational placement. According to the current filings, the parties have agreed to a mediation session on May 20, 2013, in the non-OAH matters, wherein they intend to also reach resolution on the OAH matters.

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 and timelines shall proceed as calendared. The May 20, 2013 mediation is not a special education mediation, pursuant to the Individuals with Disabilities Education Act. OAH is not conducting the mediation. There is no court order from a superior or federal court staying OAH's proceedings while the parties participate in the May 20, 2013 mediation.[1] These matters were filed in December 2012. District requests a continuance that would place the matter into September of 2013, nine months after filing. Any written decision would not be issued until approximately 10 months after filing. Such a delay is not in keeping with the mandate for a speedy resolution. Accordingly, the request to continue is denied.

IT IS SO ORDERED.

Dated: May 3, 2013

/s/
BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings

[1] It is unclear whether such an order would be binding upon OAH, and no finding is made as to the effect of such an order.