BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ELK GROVE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016020899 ORDER DENYING REQUEST FOR CONTINUANCE

On February 19, 2016, Elk Grove Unified School District filed a request for due process hearing naming Parent on behalf of Student. Elk Grove's sole issue for hearing is whether they can assess Student, who is six years old, pursuant to a January 2016 assessment plan without parental consent. On March 7, 2016, Parent filed a motion to continue this matter because she wanted to secure an attorney to represent her. The continuance was granted and the due process hearing was scheduled to begin on June 7, 2016.

On April 19, 2016, Mr. James Peters III filed a notice of representation in this matter. Mr. Peters is a non-attorney, identifies himself as a paralegal, and has represented Student in five previous due process matters in front of the Office of Administrative Hearings. Mr. Peters used to be affiliated with at least two attorneys, but all correspondence in this matter indicates that he no longer is working under the supervision of or with an attorney. Mr. Peters is the adult son of Parent in this case.[1]

On June 6, 2016, at approximately 3:30 p.m., Mr. Peters filed a motion to continue this matter, scheduled to begin the next morning. In support of the motion to continue, Mr. Peters filed a declaration, purportedly from him, and a letter, purportedly from a physician. Neither the motion nor the declaration was signed by Mr. Peters.

The motion states that Mr. Peters fell and suffered an unspecified injury after 2:00 p.m. on Monday afternoon, June 6, 2016. It continues that Mr. Peter's doctor prescribed an unspecified medication and ordered him off work for ten days or "irreparable harm may occur." The motion states that he is taking medication which "may impede my ability to appropriately represent Respondent in this matter."

[1] In order to preserve Student's confidentiality, OAH will issue an order to seal this order.

The unsigned declaration however, only states that Mr. Peters has been ordered off work by his doctor through June 16, 2016 and that he is taking medication which may impede his ability to appropriately represent Respondent in this matter. There is no mention of the date and time of the alleged "fall," no mention that the medication he is taking was prescribed by his doctor or when the medication was prescribed. There is no mention of the doctor's purported warning of irreparable harm.

The purported note from Mr. Peter's doctor, included with the motion has letterhead from Sutter Medical Group which does not have an address or phone number or a pre-printed name of a physician. The note is typewritten throughout, with the exception of some signatures at the bottom of the page. It is dated June 6, 2016. The note states that it is re: Mr. James Peters, however, it does not specify that it was written for James Peters III, the name of the representative in this case. It states "James Peters has been ill and off work since 6/6/2016. He may return to work on 6/16/16 without restriction. If you have any questions and/or concerns, please feel free to contact my office." There is no mention of any fall or other injury. The signature line of the document reads:

> Askew MD, Katie C.
> Carolina Pamphile 6/6/2016 2:22 p.m.
> Department of Urgent Care Elk Gove

Above the signature line there are three sets of cursive writing, all illegible. No opposition has been received from Elk Grove.

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. Student has not shown good cause to continue this matter. The request for continuance was not supported by a signed declaration under penalty of perjury, so no evidence was presented which could be relied upon in order to grant a continuance.

However, even if the declaration was signed, Mr. Peter's motion, declaration and purported doctor's note are not persuasive for several reasons. First, the motion contains several critical facts which are not attested to in the declaration, including the prescribing of the medication, and the date and time of the "fall."

Second, the motion and declaration are devoid of specific facts regarding the circumstances of the fall, the injury suffered and the medications prescribed. Third, the motion, declaration and doctor's note make no mention of any actual examination or meeting between any doctor and Mr. Peters. According to Mr. Peters, he "fell" after 2:00 p.m. and the note was signed by someone at 2:22 p.m. the same day. Mr. Peters supplied no evidence the he was seen by any physician to verify or evaluate his injury and the timing supports a finding that no visit took place.

Fourth, the purported note from the doctor has no information regarding the doctor, including a medical license number, an address, phone number or any other identifiable information. As noted above, there is no indication that Mr. Peters was seen by anyone at the doctor's office. The signatures are not readable and the one signature that may be from Dr. Askew is over to the side and does not contain any medical credentials or the word Dr. in the signature. The note indicates that Mr. Peters is "ill." There is no mention of any fall or injury which took place that day.

Fifth, besides having concerns regarding the authenticity of the purported note from the doctor, the motion and declaration seem to be written by someone other than Mr. Peters. For example, the motion starts out explaining that "Mr. Peters" fell and suffered and injury, "Mr. Peters" doctor prescribed mediation and ordered "Mr. Peters" off work for 10 days. However, the next line states that "I am unable to represent Student at this time." For all of these reasons, even in the declaration and motion were signed under penalty of perjury, the motion would still be denied.

Finally, the effect of another continuance on Student and Elk Grove was considered. Elk Grove contends that it has been required to assess Student since January of 2016. The entire second semester of this school year has passed without assessment. Should Elk Grove prevail, the assessment and resulting individualized education program meeting may not take place until well into the next school year. This may have a great effect on Elk Grove's ability to offer and provide Student a free appropriate public education for the 2016-2017 school year. Student was already granted a long continuance because Parent stated that she needed to obtain an attorney. In hindsight, after Mr. Peters filed his notice of representation in order to represent this six year old for the sixth time in front of the Office of Administrative Hearings, the first continuance request seems to have been a tactic to delay this hearing from taking place earlier, as Mr. Peters, Parent's son and the brother of Student,

has been again been identified as Student's representative and he vigorously opposes Elk Grove's assessment. When taken in context with the current motion, and Mr. Peters' last minute requests for continuances, failing to show up at hearing and delays in filing documents in other OAH cases[2], this appears to be a pattern and practice of delay by Mr. Peters.

Therefore, because Student has failed to establish good cause for a continuance, the matter will proceed as scheduled on June 7, 2016

IT IS SO ORDERED.

DATE: June 7, 2016

DocuSigned by:
Margaret Broussard
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MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings

[2] See OAH Case Nos. 2015010203, 2008020674, 2009061130, 2005070232, 2005070169, 2014110365.