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 FOLLOWING PREHEARING CONFERENCE AND PARTIALLY GRANTING CONTINUANCE OF DUE PROCESS HEARING

On August 23, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Charles Marson, Office of Administrative Hearings (OAH). Roger A. Greenbaum, Attorney at Law, appeared on behalf of Parent and Student. Sang-Jin Nam and Melody A. Hawkins, Attorneys at Law, appeared on behalf of the Fresno Unified School District (District). The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Motion for Continuance.

The due process hearing in this matter is now scheduled to begin on Monday, August 26, 2013. Late on Thursday, August 22, 2013, Student filed a notice that she is now represented by Mr. Greenbaum, and Mr. Greenbaum filed a motion for a continuance on the ground that he is unprepared to go to hearing on Monday. On August 23, 2013, the District filed an opposition to the motion. This PHC was convened by OAH to hear argument and rule on the motion.

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).)

From the moving and opposing papers and the arguments of counsel it appears that there is good cause only for a brief continuance so that Student's new counsel may prepare for hearing. The need for Student and Parent to be represented by counsel who is prepared slightly outweighs the District's showing of prejudice. No further continuances will be granted without a showing of compelling circumstances. Those circumstances do not include any disagreements between counsel and their clients.

The present hearing dates are vacated. The hearing will begin at 9:30 a.m. on September 10, 2013, and continue on September 11, 12, and 13, 2013, and from day to day, Monday through Thursday, as needed in the discretion of the ALJ.

2. Order Following PHC filed June 7, 2013. The Order Following PHC filed on June 7, 2013 governs this matter in all respects except as set forth above.

IT IS SO ORDERED.

Dated: August 23, 2013

/s/
CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings