BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017030570
v.	DISCHARGE OF ORDER TO SHOW CAUSE AND ORDER FOLLOWING PREHEARING CONFERENCE AND CONTINUING PREHEARING CONFERENCE AND HEARING
SAN JOSE UNIFIED SCHOOL DISTRICT.	

On April 28, 2017, a telephonic hearing on an order to show cause and a prehearing conference were held before Administrative Law Judge Rebecca Freie, Office of Administrative Hearings. Jennifer Whipple, Attorney at Law, appeared on behalf of Student. Rod Levin, Attorney at Law, appeared on behalf of San Jose Unified School District. Both hearings were recorded.

Order to Show Cause

Prior to beginning the PHC on April 28, 2017, a telephonic hearing on an order to show cause why sanctions should not be imposed and a party ordered to pay expenses was held. The ALJ had issued the OSC due to the failure of Student's counsel appear for a PHC on April 24, 2017. Counsel submitted written responses as ordered.

The ALJ has the ability, and the responsibility, to control due process proceedings under the Individuals with Disabilities Education Act similar to those in a civil or criminal action before other tribunals. The obligation of counsel to appear for all calendared matters is well known to counsel who have practiced before OAH for some time. These procedures are in place to ensure that cases are timely calendared, continuances are properly granted and OAH can ensure that cases will be processed under the time lines set out by the IDEA. The procedures are designed to protect the rights of both the child and the public education agency. When the procedures are not followed, the impact upon OAH and the parties' rights can be significant. Rescheduling the PHC in this matter resulted in wasted time and resources and prevented the ALJ from being assigned to other matters.

Student's attorney filed a declaration on April 26, 2017, explaining that she was recovering from surgery on April 24, 2017, and due to a complication went to the hospital and was subsequently admitted. Counsel has shown good cause for her absence on April 24, 2017, and sanctions are not warranted. The order to show cause is discharged.

Prehearing Conference

Based upon discussion with the parties, the ALJ issues the following order:

1. Continuance of Hearing. Due to her ongoing medical issues, counsel for Student requested a brief continuance of the prehearing conference and hearing. San Jose did not object.

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:

☒ Granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference:	May 12, 2017, at 10:00 a.m.
Due Process Hearing:	May 23, 24, and 25, 2017, at 9:30 a.m. for the first day, and 9:00 a.m. for the following days, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to

continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Other Matters Deferred to Continued PHC. All other matters are deferred to the continued PHC on May 12, 2017, at 10:00 a.m.

IT IS SO ORDERED.

DATE: April 28, 2017

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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings