BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. REDLANDS UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013030602
REDLANDS UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013020305 ORDER DENYING RENEWED REQUEST FOR CONTINUANCE, WITHOUT PREJUDICE

On April 18, 2013, Student's Mother filed a renewed request (Renewed Motion) to continue the dates in this matter on the grounds that her non-attorney advocate, Steven A. Figueroa, was hospitalized for treatment for a heart condition. The renewed request was based upon an Order issued on April 17, 2013 (April 17, 2013, Order) by the Office of Administrative Hearings (OAH), denying without prejudice Mother's initial request to continue dates in this matter. The April 17, 2013, Order was based, among other factors, upon the lack of evidence of Mr. Figueroa's hospitalization and prognosis, and of the failure of the parties to attempt to agree upon new hearing dates. The Renewed Motion is supported by a letter from Bahaa B. Girgis, M.D., dated April 17, 2013, stating, among other things, that Mr. Figueroa was admitted to Riverside Community Hospital on April 12, 2013, that he remained under physician care in the Heart Care Unit, and that Dr. Girgis recommended that Mr. Figueroa be off work for one month.

On April 25, 2003, the Redlands Unified School District (District) filed opposition to the Renewed Motion, and a Motion for Sanctions, on the grounds that Student's Mother had misrepresented Mr. Figueroa's condition, and that Mr. Figueroa had attended and participated in a two and one-half hour IEP meeting on April 23, 2013, as an advocate for another pupil in the District, without mentioning or displaying any health issues.

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 without prejudice. All hearing dates and timelines shall proceed as calendared. Here, the parties have requested a continuance of the hearing dates, and OAH is inclined to grant the continuance. However, the parties did not discuss and confer regarding new hearing dates as required by OAH, and by the April 17, 2013, Order. Mr. Figueroa's health would not have prohibited him from engaging in such a discussion with District's counsel, as Mr. Figueroa has engaged in telephonic conversations with OAH staff since the issuance of the April 17, 2013, Order, and prior to the filing of this Renewed Request, and has participated in at least one IEP meeting since the April 17, 2013, Order. Further, contrary to Mother's argument in the Renewed Motion, the April 17, 2013, Order did not, on its face, require any conduct that would have violated Rule 2-100 of the State Bar Rules of Professional Conduct, as Mother presented no evidence that Rule 2-100 applies to this matter.

Forms are available on the OAH website that explain the procedure for selection of continuance dates. Trial setting conferences are set only in unusual cases, and this is not an unusual case. The parties may re-submit the request to continue after they have agreed upon hearing dates. If the parties are unable to agree on hearing dates, they may request OAH to select dates. In either event, any further continuance request shall be filed before the prehearing conference that is currently scheduled for May 6, 2013.

District's Motion for Sanctions is Denied. Mother has provided evidence of Mr. Figueroa's hospitalization and medical condition, and, even though Mr. Figueroa appeared at a two and one-half hour IEP meeting contrary to Dr. Girgis's recommendation, there is insufficient evidence that Mother or Mr. Figueroa have engaged in actions or tactics that

were in bad faith, frivolous, or designed to harass or to cause unnecessary delay.

IT IS SO ORDERED.

Dated: April 26, 2013

/s/

ELSA H. JONES
Acting Presiding Administrative Law Judge
Office of Administrative Hearings