BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017021181
v.	ORDER FOLLOWING PREHEARING CONFERENCE AND CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING DATES
SAN MATEO FOSTER CITY SCHOOL DISTRICT.	

On June 12, 2017, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Charles Marson, Office of Administrative Hearings. There was no appearance on behalf of Student.[1] Lenore Silverman, Attorney at Law, appeared on behalf of the San Mateo Foster City School District. The PHC was recorded.

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

1. Motion for Continuance. At the outset of the PHC, the District moved to continue the matter on the ground that Student's counsel was unavailable on the dates now set for hearing, having been deprived of her office on short notice due to a change of ownership of the building. The District had previously agreed to a continuance on this ground, but Ms. Foley applied for it on the wrong form, and the application was denied for that reason on June 6, 2017. No further application was made.

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

1 The ALJ telephoned Student's attorney Susan Foley at the scheduled hour, and again five minutes later, and both times was greeted by an answering machine.

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).)

The District has shown good cause for a continuance. Student's attorney is unavailable for the hearing as now set. The requested continuance is granted. All dates are vacated. This matter will be set for PHC on July 7, 2017, at 10 a.m., and for due process hearing on July 18, 19, and 20, 2017, at 9:30 a.m. on the first day of hearing and 9:00 a.m. on subsequent days, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

2. Participation of Student's Attorney. Ms. Foley did not request the continuance she sought on the proper form, did not file a prehearing conference statement and did not appear for the prehearing conference. She is admonished that any further failure to timely file pleadings or make appearances in this matter may result in the issuance of an order to show cause why the costs of the proceedings should not be shifted to her. (Cal.Code Regs., tit. 5, § 3088, subd. (e).)

3. All other matters deferred. The resolution of all other matters is deferred to the continued PHC on July 7, 2017, at 10 a.m.

IT IS SO ORDERED.

DATE: June 12, 2017

DocuSigned by:
Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings