BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT

v.

PACIFIC CHARTER INSTITUTE and VALLEY VIEW CHARTER PREP,

OAH CASE NUMBER 2020060885

and

VALLEY VIEW CHARTER PREP

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2020060931

ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING DATES

SEPTEMBER 23, 2020

On September 18, 2020, Pacific Charter Institute and Valley View Charter Prep filed with the Office of Administrative Hearings, referred to as OAH, a request to continue this matter, based upon counsel's unavailability. On September 22. 2020, Student opposed the request based upon Student's counsel having conflicting matters on the suggested date and because a continuance would delay resolution of the matter.

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. (Ed. Code, § 56505, subd. (f)(3); 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 or imposing conditions on the continuance; and any other relevant fact or circumstance. (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. The continuance request is granted as requested. Student has objected because a continuance will delay the matter. However, the request for a two-week continuance of the hearing to allow counsel to attend counsel's own wedding is not undue or excessive delay. This would be the first continuance requested after Student amended his due process hearing request, and the earlier continuance granted in this matter prior to consolidation was at Student's request, to allow time for Student's expert to prepare for hearing. The continuance request is supported by good cause.

Student's other ground for opposing the request is that his counsel has other matters scheduled for the proposed new hearing date. Student suggests that if the hearing is continued that it be set on alternate he proposes. Both dates are earlier than the currently-assigned hearing dates, and one alternative date proposed by Student was discussed in the motion and ruled out as unworkable. Counsel for Pacific Charter Institute and Valley View Charter Prep appears to have contacted counsel for Student prior to making the continuance request, as the motion noted Student's counsel's conflicts. Student's counsel does not seem to have consulted with her counterpart prior to proposing dates. Because movant's counsel's availability for Student's proposed dates is not known, those dates cannot be substituted for those requested. If Student's counsel still has a conflict with other matters on the eve of trial, Student may file another continuance request.

All currently set dates in this matter are vacated.

This matter will be set as follows:

Prehearing Conference will be held on Monday, November 9. 2020, at 10:00 AM.

Due Process Hearing will be held on November 17 through 19, 2020. The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, 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 their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date.

IT IS SO ORDERED.

DocuSigned by:
Chris Butchko
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Chris Butchko

Administrative Law Judge

Office of Administrative Hearings