BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017051304 ORDER DENYING RENEWED REQUEST FOR CONTINUANCE

This matter was filed on May 26, 2017; continued on June 14, 2017; and continued again on July 10, 2017. It is now set for hearing on August 15 and 16, 2017.

On August 3, 2017, Parent filed a motion for a further continuance of unstated length on the ground that she was suffering from a leg injury. The motion was supported by a note dated July 31, 2017, from "Margie D. Felice, P.A." on a form without a letterhead or professional affiliation. The form advised, by checked box, that Parent was not able to return to work. No date was given when she could return to work, and the only comment made by Ms. Felice was that Parent was "In care for leg pain . . . " Fairfield-Suisun opposed the motion.

The undersigned orally denied the August 3, 2017 motion to continue during a prehearing conference held on August 7, 2017, because it did not make a sufficient showing of good cause. Parent was advised that if she wished to renew her motion, a persuasive showing would consist, among other things, of documentary information from a medical professional describing her claimed leg injury, acknowledging awareness of the physical demands of attending a two-day hearing, and stating particularly why the injury would preclude her from attending a hearing on August 15 and 16, 2017, as opposed to not going to work. Later that day OAH served on Parent a copy of the Order Following Prehearing Conference that confirmed the denial and repeated the shortcomings in the original medical documentation.

However, approximately 45 minutes after the prehearing conference concluded, Parent filed a revised version of the July 31 note from Ms. Felice. It contained no new date or signature, and appeared to be a handwritten modification of the previous note adding a check box advising that Parent was limited in her ability to sit or stand for more than 10 minutes or 10 hours (the duration was not supplied) at a time, and adding that Parent was receiving physical therapy three times a week. Fairfield-Suisun again opposed the motion, pointing out a number of ways in which the revised note did not comport with the requirements stated at the prehearing conference and in the Order Following Prehearing

Conference. Fairfield-Suisun's opposition to the renewed motion also suggested that it was difficult to see how the note could actually have been modified by Ms. Felice in the 45 minutes between the end of the PHC and the filing of the revised note with OAH.

Before the undersigned could rule on the renewed motion, and on August 9, 2017, Parent filed a third version of the same note. This third version is dated August 7, 2017; is on the letterhead of the Intercommunity Medical Group of Fairfield; and contains a new signature by Ms. Felice.[1] It removes any reference to Parent's difficulty sitting or standing.[2] It adds the language: "Parent may return to work in 6 wks." OAH has not yet received a response to the third version of the note from Fairfield-Suisun.

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).)

The third version of the note from Ms. Felice, filed August 9, 2017, still does not establish good cause for continuing the hearing. It still does not support Parent's claim that she has a leg injury, as opposed to leg pain. It still does not address the physical requirements of attending a hearing, as opposed to going to work, and it still does not explain why Parent could not attend a hearing on August 15 and 16 as the result of any leg pain she may have. Nor does it explain why there is any inconsistency between attending physical therapy 3 times a week and attending a two-day hearing. The troubling history and evolution of the note undermine its persuasive value. In addition, the note does not address the issues that the undersigned twice communicated to Parent she must address in order to file a persuasive renewed request for continuance.

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[1] Parent does not explain why she removed the letterhead from this note the first two times she filed it.

[2] Orally at the PHC and in the Order following the PHC, the undersigned granted Parent leave to sit, stand and request recesses as needed when she appears at the hearing. That order remains in effect.

The renewed request for continuance filed August 7, 2017, as supplemented by the second revised note from Ms. Felice filed August 9, 2017, is DENIED.

DATE: August 10, 2017

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Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings