

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PACIFICA SCHOOL DISTRICT.

OAH Case No. 2014070772

ORDER DENYING REQUEST FOR
CONTINUANCE WITHOUT
PREJUDICE

On October 24, 2014, Parents, on behalf of Student, filed a request to continue the dates in this matter on the grounds that they required time to find legal representation. The request was served upon the Pacifica School District via facsimile. Based upon the reasons set forth below, the request is denied without prejudice.

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).) The Office of Administrative Hearings 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. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. The complaint in this matter was filed by Linda Hughes, an advocate, on behalf of Parents and Student. On July 24, 2014, the parties filed a joint request for continuance, which was executed by Ms. Hughes, as Parents and Student's

representative. The October 24, 2014 request to continue is filed by Parents and does not reflect whether Ms. Hughes is aware of it, whether she agrees, or whether she was served with it. OAH has not received any document stating that Ms. Hughes no longer represents Student. Furthermore, Pacifica is represented by legal counsel in this matter. While the October 24, 2014 request was served upon Pacifica, it was not served upon Pacifica's legal counsel. On October 31, 2014, and November 4, 2014, OAH contacted Pacifica's legal counsel to inquire whether they were aware of the request for continuance and whether they intended to file a response. OAH has received no response from Pacifica's legal counsel. In light of the lack of clarity as to who represents Student and who was or was not served with the request to continue, it is denied without prejudice. The parties are encouraged to meet and confer to see if they agree on another continuance of this matter. The issue of a continuance may be raised at the prehearing conference currently set for November 10, 2014.

IT IS SO ORDERED.

DATE: November 4, 2014

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings