

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014100402

ORDER DENYING REQUEST FOR
CONTINUANCE

On November 3, 2014, Naum Morgovsky filed a request to continue the November 5, 2014 due process hearing in this matter on various grounds. On November 4, 2014, the San Mateo-Foster City School District filed an opposition to the request. As discussed below the request is denied.

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. This matter was filed by San-Mateo against Student. On October 23, 2014, in preparation for the October 27, 2014 prehearing conference, Mr.

Morgovsky filed a PHC statement on behalf of Student. Mr. Morgovsky designates himself as “Attorney in fact” under the Probate Code. The Probate Code does not apply to special education proceedings. Neither Mr. Morgovsky nor Parents have filed any document with OAH establishing that Mr. Morgovsky is authorized to represent Student in these proceedings. Despite that, and based upon Parent’s oral statements at the October 27, 2014 PHC, OAH permitted Mr. Morgovsky to participate in the PHC. Student was ordered to file a Notice of Representation with respect to Mr. Morgovsky’s representation no later than October 29, 2014. To date, OAH has received no such notice. This, in and of itself, is grounds to deny a request to continue filed by an individual who OAH cannot confirm has written authorization to represent Student. **If Student intends to have Mr. Morgovsky represent Student at hearing, Parent and/or Mr. Morgovsky must provide a written authorization for representation to the Administrative Law Judge at the start of the hearing.**

Regardless of the concerns OAH has regarding Mr. Morgovsky’s representation of Student, OAH has considered the request for continuance and San Mateo’s opposition. Student’s request is denied. The matter shall proceed to hearing on November 5, 2014, as scheduled.

IT IS SO ORDERED.

DATE: November 4, 2014

/s/

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