BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2019020666

and

TORRANCE UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2018110449

ORDER DENYING STUDENT'S REQUEST FOR CONTINUANCE

On November 13, 2018, Torrance Unified School District filed with the Office of Administrative Hearings, referred to as OAH, a Request for Due Process Hearing, OAH case number 2018110449, naming Parent on behalf of Student. This will be referred to as Torrance's Case. On November 29, 2018, OAH granted the parties' joint request for

continuance, which set a mediation for February 22, 2019, and due process hearing on April 2, 2019. Torrance cancelled the mediation on February 20, 2019.

On February 15, 2019, Student filed a Request for Due Process Hearing, OAH case number 2019020666, naming Torrance. This will be referred to as Student's Case. On March 7, 2019, OAH granted Student's motion to consolidate Torrance's and Student's Cases. OAH designated Student's case as the primary case, which vacated the hearing dates in Torrance's case, and pushed back the hearing to April 9, 2019.

At the March 29, 2019 prehearing conference in this consolidated matter, OAH granted the parties' continuance request for the hearing to commence on May 29, 2019. At the prehearing conference, the parties could not agree to a mediation date, so OAH instructed the parties to agree to a mediation date that would not delay the hearing and to submit their request to OAH.

On May 10, 2019, the parties finally submitted their request for a mediation date, but failed to heed the directive of OAH, as the parties also requested that OAH continue the hearing for a third time. On May 13, 2019, OAH granted the parties' third continuance request, setting a mediation date of May 30, 2019, and for the hearing to begin on July 30, 2019.

On July 23, 2019, Student filed a fourth request to continue this matter because of conflict with OAH Case No. 2018081089, as Student's attorneys and expert witness needed to appear in that matter scheduled for the same dates as this matter, and because of a family medical emergency as to one of Student's attorneys. Regarding, OAH Case No. 2018081089, Student's attorneys requested the hearing for conflicting dates with this matter as they did not wish OAH Case No. 2018081089 to be continued until September 2019, as requested by the school district in that case. Included in

Student's fourth continuance request in this case were dates that Student's attorneys and expert were not available for hearing.

On July 24, 2019, OAH granted the continuance request based on the unavailability of one Student's attorneys due to the unexpected family medical emergency. The continuance order set the hearing to commence on August 27, 2019, when Student's attorneys and expert stated that they were available in their respective declarations.

On August 1, 2019, Student submitted a fifth continuance, which included a new declaration from Student's expert that claimed that she is not available on the dates presently set for hearing and not available through September 3, 2019, and returning to work on September 4, 2019, as she will be "out of the country or unavailable for other matters . . . ." Student requested that the hearing commence on October 8, 2019, as Student's expert had other obligations during September.

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:

Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. The continuance request is denied as Student has failed to establish good cause for a fifth continuance in this matter. Student did not establish that Student's expert is not available for the dates set presently for hearing, just that Student's expert would prefer not to testify during those dates. Student's expert is not available to testify only if she is out of California at the time and not subject to a subpoena for her testimony.

IT IS SO ORDERED.

DocuSigned by:
Peter Paul Castillo
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DATED: August 02, 2019

Peter Paul Castillo
Presiding Administrative Law Judge
Office of Administrative Hearings