BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: FREMONT UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017021203 ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND HEARING DATES

On March 10, 2017, Student filed with the Office of Administrative Hearings a request to continue the dates in this matter to allow her to complete the college class she is attending prior to the hearing.[1] Student used a form that is designated for use only when both parties are in agreement to the requested continuance. However, the joint continuance form submitted by Student was not signed by Fremont Unified School District. Student requested a hearing date in June 2017.

On March 14, 2017, Fremont filed a motion to continue the hearing due to the unavailability of its counsel for the current hearing date of March 23, 2017. Fremont proposed hearing dates in April or May and noted that Student did not agree to the proposed dates.

On March 15, 2017, Student filed another request for continuance, again using the OAH joint request form, but with only Student's signature.[2] In this continuance request, Student requests a hearing date in July due to the unavailability of a potential witness. This matter has not previously been continued.

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.

[1] Also on March 10, 2017, Student filed a request for a public hearing and change in hearing location. This motion will be addressed in a separate order.

[2] Student attached numerous documents that were unrelated to the continuance request. A review of the OAH docket shows that Student has filed several documents with OAH, unrelated to motions. Student is advised that she should only file motions requesting relief, or responses to motions. No unrelated evidentiary documents shall be filed nor will they be considered by OAH. Nothing in this order prevents Student from filing her own, independent request for a due process hearing.

§ 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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request to continue is:

☒ Granted. Student has not established that she is unavailable for hearing prior to June. Further, Student has not established the unavailability of a necessary and material witness regarding the sole issue for hearing of whether Fremont is entitled to conduct an assessment of Student. Student may request telephonic witness testimony as needed.

All dates are vacated. This matter will be set as follows:

Prehearing Conference:	April 17, 2017, at 1:00 p.m.
Due Process Hearing:	April 26, 2017, at 9:30 a.m., April 27, 2017, at 9:00 a.m., and continuing day to day, Monday through Thursday, 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 that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: March 15, 2017

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings