BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. RIVERSIDE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017080966
RIVERSIDE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017040949 ORDER GRANTING STUDENT'S REQUEST FOR CONTINUANCE AND SETTING DUE PROCESS HEARING

On October 6, 2017, Student filed a request to continue hearing dates in this matter with the Office of Administrative Hearings to begin on October 30, 2017, based upon several significant, unanticipated changes in the status of the case as a result of which the case is not ready for hearing. On October 9, 2017, District filed a non-opposition.

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).)

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

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

Due Process Hearing:	October 31-November 2, 2017, at 9:30 AM first day, 9:00 AM after, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

Student did not present any admissible evidence that a purported key witness, Dr. Thomas Gross, was suddenly and unexpectedly unavailable for hearing. Dr. Gross is not listed as a prospective witness in Student's prehearing conference statement. However, the sworn declaration of counsel's paralegal establishes that Student agreed to allow District to serve the documents in District's exhibit binder on less than five days' notice, but as of Thursday, October 5, 2017, Student had received only 11 of District's total of 89 exhibits for a hearing scheduled to start on Tuesday morning, October 10, 2017. The non-opposition by District indicated that a complete binder would be served on Student by close of business on October 6, 2017. Student could not have anticipated that District would fail to exchange the entirety of its exhibit binder in these consolidated cases until one business day prior to the start of the hearing, and therefore, Student cannot prepare for hearing. This significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing is good cause for a short continuance to the dates requested by Student, and unopposed by District.

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: October 9, 2017

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings