BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SALINAS UNION HIGH SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013070582 ORDER GRANTING REQUEST FOR CONTINUANCE

On July 15, 2013, the Salinas Union High School District (District) filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming Student. On July 29, 2013, OAH granted the District's continuance request, which set the matter for hearing on August 20, 21, and 22.

On August 12, 2013, OAH held a telephonic prehearing conference (PHC), attended by District's legal counsel Daniel A. Osher and Student's legal counsel LaJoyce L. Porter.[1] At the PHC, Ms. Porter stated on the record that Student had filed a complaint and would request that the two matters be consolidated. The District strongly opposed the consolidation request at the PHC and in its August 13, 2013 written opposition on the grounds that any delay in the hearing would unfairly prejudice the District in providing Student with special education services that Student is not entitled to receive. OAH denied the consolidation request on August 14, 2013.

On August 19, 2013,[2] Student filed a request to continue the dates in this matter, based upon Ms. Porter only recently receiving relevant documents from the District and needing more time to review those documents in preparation for hearing.[3] Although the District has not submitted a response, it is presumed that the District opposes the request based on the statements made at the PHC and opposition to consolidation brief in not wanting any further delay in these proceedings.

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[1] August 23, 2013, was added as an additional day for hearing at the August 12, 2013 PHC.

[2] Ms. Porter faxed the continuance request after the close of business hours on August 16, 2013, at 5:06 p.m.

[3] Student requested a 45-day continuance because of scheduled surgery for Ms. Porter.

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. Student established good cause for a continuance as this is Student's first continuance request and Ms. Porter set forth adequately the need for additional time because of the recently received documents from the District, especially those related to the independent educational evaluation. (See *M.M. v. Lafayette School Dist.* (N.D.Cal. February 7, 2012, Nos. CV 09–4624, 10–04223 SI) 2012 WL 398773, ** 11-12.) Additionally, Student's request for a continuance will not overly burden the District in providing special education services during the pendency of this action balanced against Student's right to a fair hearing. (See *Lake Washington School Dist. No. 414 v. Office of Superintendent of Public Instruction* (9th Cir. 2011) 634 F.3d 1065, 1067-1068.) Therefore, this matter will be set as follows:

Due Process Hearing:	October 8, 9, 10, and 11, 2013. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m., except for October 8, 2013, when the hearing shall begin at 9:30 a.m., unless otherwise ordered.[4] The hearing

[4] If the District is not available during these dates, Mr. Osher shall meet and confer with Ms. Porter on agreeable dates and submit a joint continuance request.

shall take place at the District's offices, located at 431 West Alisal Street, Salinas, California 93901.[5]

IT IS SO ORDERED.

Dated: August 19, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

[5] At a minimum for the hearing, the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for the District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. The District shall ensure that all parties and the ALJ have drinking water available to them.