BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TEHACHAPI UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015120889 ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING CONTINUANCE OF PREHEARING CONFERENCE AND HEARING DATES

On Friday, March 25, 2016, a telephonic prehearing conference was held before Administrative Law Judge Ted Mann, Office of Administrative Hearings. Kelly Kaeser, Attorney at Law, appeared on behalf of Student. Kelly Lazerson, Attorney at Law, and Kyle Holmes, Attorney at Law, appeared on behalf of Tehachapi Unified School District The PHC was recorded.

On Friday, March 18, 2016, following the end of the business day, District filed a Motion to Continue the hearing. On March 21, 2016, Student filed opposition to District's Motion to Continue. Oral argument on District's Motion to Continue was heard at the prehearing conference.

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 (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).)

District's Motion seeks a continuance of the hearing dates due to the unavailability of District's trial counsel, Kathleen LaMay, who was placed on medical leave beginning Monday, March 21, 2016, and is not expected to be able to return to work until the latter part of April. Each of the three other special education attorneys for Schools Legal Services is unavailable during the presently scheduled hearing dates. Attorney Darren Bogie has hearings before the Public Employment Relations Board that directly conflict with the present hearing dates. Attorney Stacy Inman is retiring at the end of March of 2016, and is thus unavailable the following month for the hearing. Attorney Kyle Holmes expects his first child to be born around the time of the hearing dates presently scheduled in this matter. Student opposes the Motion on the grounds that Student will be prejudiced by further delay.

It is found that on balance there is good cause for District's Motion to Continue, and that Student will not be prejudiced due the likelihood that the decision in this case will be issued during Student's summer break whether a continuance is granted or not. As such, District's request for continuance is granted. Further continuances, as explained during the prehearing conference, are greatly disfavored.

Based upon discussion with the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing is continued and shall take place on May 16-19, 2016, and May 23, 2016, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. with the exception of both the first day of hearing, Monday, May 16, 2016, and Monday, May 23, 2016, on which days the hearing shall begin at 1:30 p.m.

The hearing shall take place at the District's offices located at 300 S. Robinson St., Tehachapi, CA 93561.

The parties shall immediately notify all potential witnesses of the continued hearing dates, and shall re-subpoena witnesses as 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.

2. Prehearing Conference Date and Time. The prehearing conference is continued and shall take place on Monday, May 2, 2016 at 10:00 a.m. The prehearing conference will be conducted by telephone as detailed in the Scheduling Order.

IT IS SO ORDERED.

DATE: March 28, 2016

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Ted Mann
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TED MANN
Administrative Law Judge
Office of Administrative Hearings