BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ALAMITOS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017050096 ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND HEARING DATES; REPRESENTATION OF FATHER

On August 7, 2017, Administrative Law Judge Judith Pasewark held a prehearing conference in this matter granted Student's continuance request, and also bifurcated the matter to hear and determine first the Office of Administrative Hearings' jurisdiction over this matter. A complete prehearing conference order will be issued subsequently as ALJ Pasewark is presently not able to draft the order, and will be issued upon her return.

On August 18, 2017, 2017, counsel for Student's Mother requested clarification as to her ability to communicate with Student's Father, who is also an attorney and whose law firm has been retained to represent Father. Further, counsel for Student's Mother requested that Student's Father serve counsel for Student's Mother by fax or email and not mail.

As to representation of Student's Father, the May 11, 2017 notice of representation states that Father's law firm will represent Father, without naming a particular attorney in the firm, signed by attorney Scott P. Burst of the firm. Subsequently, Mr. Burst has filed all pleadings in this matter. As such, OAH will consider Father on behalf of Student being represented by Mr. Burst from Father's law firm and if Father wishes to represent Student in this matter and make appearances he shall file an amended notice of representation that states so explicitly so counsel for Student's Mother and Los Alamitos Unified School District know if they can communicate directly with Student's Father in this matter, and not Mr. Burst.

As to the issue of service of documents by Father's law office, California Code of Regulations, Title 5, Section 3083, subdivision (b), permits a party to serve document on other parties and OAH by regular mail. Therefore, OAH cannot order Student's Father's law firm to serve the other parties by fax or email.

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:

The bifurcated matter will be heard on September 26, 2017, by way of declaration and written briefs. All written briefs and declarations shall be served and received by OAH and the other parties by 5:00 p.m., on September 26, 2017, and objections to evidence shall be served and received by OAH and the other parties by 5:00 p.m., on September 29, 2017. OAH will issue a decision by October 18, 2017. The remaining portion of the hearing shall be heard as follows:

Prehearing Conference:	October 23, 2017, at 10:00 AM
Due Process Hearing:	October 31, 2017, at 9:30 AM, November 1 and 2, 2017, at 9:00 AM, 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: August 21, 2017

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings