BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018090669
v.	ORDER GRANTING MOTION TO CONTINUE HEARING, DENYING MOTION TO CONTINUE PREHEARING CONFERENCE, AND SETTING HEARING
LONG BEACH UNIFIED SCHOOL DISTRICT.	

Student filed his due process hearing request in this matter on September 18, 2018. OAH set a prehearing conference for November 5, 2018, and hearing on November 14, 2018. On October 30, 2018, Long Beach filed a motion to continue the prehearing conference to February 11, 2019, and hearing to February 19-21, 2019. Student opposed Long Beach's motion. At the November 5, 2018 PHC, Student was willing to continue the hearing to allow mediation in December 2018, and hearing a short time thereafter, but Student opposed continuing the hearing to February 19, 2019, on grounds that such a three- month delay would prejudice Student. OAH denied Long Beach's motion to continue the November 14, 2018 hearing date, and set hearing for November 14, 15 and 26, 2018. The parties completed the PHC.

On November 9, 2018, Long Beach filed an amended motion, with supporting declaration, to continue the hearing in this matter to December 11-13, 2018, and the PHC to December 3, 2018. Long Beach made its motion on grounds that Long Beach has two earlier-filed matters set for hearing as of November 14, 2018 (OAH Case nos. 2018070073 and 2018051105). On November 13, 2018, OAH staff contacted Student's counsel, who indicated Student would not respond to Long Beach's motion.

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).) 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 conflict between the hearing date in this matter and the hearing dates in two previously-filed matters is good cause for a reasonable continuance of this matter, and Student does not oppose Long Beach's amended motion to continue.

Accordingly, Long Beach's motion to continue the hearing dates in this matter is granted. The November 14, 2018 hearing date in this matter is vacated. The matter is continued and will be heard on December 11, 12 and 13, and continuing day to day thereafter, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at Long Beach USD, Tucker, Bungalow 24, 2221 Argonne Avenue, Long Beach, CA 90815. The hearing will commence at 9:30 a.m. on December 11, 2013, and at 9:00 a.m. on all other days, unless otherwise ordered.

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.

Long Beach's motion to continue the PHC in this matter is denied because the parties completed the PHC on November 5, 2018.

IT IS SO ORDERED.

DATE: November 13, 2018

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ROBERT G. MARTIN
Administrative Law Judge
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Office of Administrative Hearings