BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019011113 ORDER GRANTING SECOND REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On May 14, 2019, Student filed a motion to continue the dates in this matter with the Office of Administrative Hearings. Student contends the parties are continuing settlement negotiations that require observations of school sites by Parents, which they have not yet completed. Student's attorney also claims she has a hearing in an older matter, OAH Case Number 2018081089 filed on August 27, 2019 (sic) [1], which is scheduled to start on May 28, 2019, which would conflict with the hearing dates in this case. Student's attorney represented in a declaration under penalty of perjury that Los Angeles Unified School District does not oppose a continuance and has agreed to the proposed dates.

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).)

[1] Student's counsel asserts in her declaration and argument that OAH Case Number 20181089 was filed on August 27, 2019. The record in that case reflects the matter was filed on August 27, 2018.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Student's counsel's potential calendar conflict with OAH Case Number 2018081089 is not good cause for continuance because 1) OAH Case Number 2018081089 was continued to hearing dates agreed upon by both parties; 2) this case was also previously continued at the request of the parties to mutually agreed upon dates; and 3) OAH Case Number 2018081089 has not yet started hearing which would result in an actual conflict. However, the parties have demonstrated good cause for a short continuance to allow them to continue settlement negotiations based on the facts presented. Because this is the second continuance, and the parties have mutually agreed to the dates stated below, **OAH does not contemplate granting any further continuances**.

The request is granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference:	July 8, 2019 at 3:00 p.m. The parties shall file prehearing motions no later than close of business three business days before the PHC. If the parties file a motion after that date, the party doing so shall accompany the motion with a declaration under penalty of perjury establishing good cause for the late-filed motion.
Due Process Hearing:	July 16, 17, and 18, 2019, and continuing day to day, as needed at the discretion of the Administrative Law Judge. The first day of hearing will start at 9:30 a.m. and all other days at 9:00 a.m. 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.**

IT IS SO ORDERED.

DATE: May 15, 2019

DocuSigned by:
Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings