BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BURLINGAME ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2017050159 ORDER FOLLOWING PREHEARING CONFERENCE; GRANTING REQUEST FOR CONTINUANCE; SETTING PREHEARING CONFERENCE AND HEARING DATES; AND ORDERING RESPONSE TO STUDENT'S COMPLAINT

On August 21, 2017, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Father appeared on behalf of Student. Jan E. Tomsky, Attorney at Law, appeared on behalf of Burlingame Elementary School District. The PHC was recorded.

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

1. Burlingame's Request for a Continuance. On August 18, 2017, Burlingame filed a motion to continue the due process hearing because its counsel has been ordered to appear before OAH in another on-going due process hearing for the dates set for this matter. On August 18, 2017, Student filed an opposition on the grounds that Student will be prejudiced by any further continuance. At the PHC, both parties were heard as to the requested continuance.

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. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Burlingame established good cause for a short continuance, and the matter was continued to the following dates:

Prehearing Conference:	September 11, 2017, at 10:00 a.m.
Due Process Hearing:	September 19, 2017, at 9:30 a.m., September 20-21, 2017, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

As ordered in the scheduling order, Burlingame shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. At the PHC, Burlingame certified that the facilities used for this case comply with the law. **Burlingame shall file a written certification with OAH within two days of the date of this order.**

2. Notice to Witnesses. 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.

3. Response to Student's Complaint. Student represents that he has not received from Burlingame a response to his request for a due process hearing. Pursuant to *M.C. v. Antelope Valley Union High School District* (9th Cir. 2017) 852 F.3d 840, Student's case should not proceed to a due process hearing until Burlingame either files a response to Student's complaint, or shows proof that it provided a written response to Student as required by 20 U.S.C. § 1415(c)(2)(B)(i)(I). **Burlingame is ordered to file with OAH, a response to Student's complaint, or proof of having provided a written response to Student, not later than August 23, 2017.**

4. Other Matters. All other matters relevant to preparing for hearing, including clarification of the issues and identification of witnesses and exhibits, will be addressed at the telephonic PHC on September 11, 2017.

5. Settlement. The parties are encouraged to continue working together in an attempt to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled PHC and hearing dates. Dates for the PHC and hearing will not be cancelled unless Student withdraws his case or otherwise requests dismissal, or unless otherwise ordered.

IT IS SO ORDERED.

DATE: August 21, 2017

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings