BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BERKELEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018030517 ORDER FOLLOWING PREHEARING CONFERENCE AND CONTINUING PREHEARING CONFERENCE AND HEARING

On June 11, 2018, a telephonic prehearing conference was held before Administrative Law Judge Rebecca Freie, Office of Administrative Hearings. Natashe Washington, Attorney at Law, appeared on behalf of Student. Lenore Silverman, Attorney at Law, appeared on behalf of Berkeley Unified School District. The PHC was recorded.

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

On June 7, 2018, the parties filed a joint request to continue the PHC and due process hearing based on the fact that Berkeley was already scheduled to be in hearing on the date set for this hearing, June 19, 2018. OAH issued an order denying the request on June 8, 2018, based on the fact that the parties filed the request less than three business days before the PHC. The parties explained during the PHC that they had not filed the request sooner because they were in mediation on June 7, 2018, and were hopeful that the case would settle at mediation. It did not. Counsel for Student also stated that she would be out of the country between June 27, 2018, to July 25, 2018, and would therefore not be available for hearing until after July 25, 2018. Based on the forgoing, the parties established good cause as to why the motion was not filed three-business days before the PHC.

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. Good cause is found based on Berkeley's scheduling conflict and Student's attorney's unavailability. All dates are vacated. This matter will be set as follows:

Prehearing Conference:	July 27, 2018, at 1:00 p.m.
Due Process Hearing:	July 31, 2018, and August 1, and 2, 2018, beginning at 9:30 a.m. on July 31, 2018, and beginning at 9:00 a.m. on August 1, and 2, 2018, then continuing day to day, 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: June 13, 2018

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Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings