BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: NEWPORT-MESA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016090101 ORDER DENYING STUDENT'S FATHER'S REQUEST FOR CONTINUANCE

On January 30, 2017, Student's Father telephoned the Special Education Division of the Office of Administrative Hearings to request a continuance of the hearing dates in this matter, based upon failure to provide notice to him of the hearing. Father and Mother of Student are divorced and custody orders are in place. A restraining order limiting Father's access to the Student's Mother is in place until February 27, 2018. Pursuant to an order from the Division Presiding Judge, a hearing was scheduled for January 31, 2017 at 9:30 to consider Father's request. Father was ordered to appear telephonically. Father submitted a declaration on January 31, 2017, detailing the basis for his request. Student's Mother submitted documents on January 31, 2017 opposing Father's motion on the grounds that he had no legal right to participate in the hearing. Mother also appeared telephonically at the hearing which proceeded as scheduled on January 31, 2017. Also present during the hearing was counsel for Newport-Mesa and Maureen Cottrell, Special Education Director for Newport-Mesa.

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 reviews a request for continuance to determine whether good cause exists. The undersigned has considered all relevant facts and circumstances including testimony taken under oath from both parents as well as orders from Orange County Superior Court dated September 1, 2015 and March 11, 2016, and the transcript of the hearing preceding that Court's order of September 1, 2015 establishing Father's rights in relationship to the children.

In his declaration, Father asserts that he is entitled by court order to "complete involvement in the educational direction of our minor children" while acknowledging the Orange County Superior Court's order granting Mother sole legal custody. Review of the transcript of the September 1, 2015, custody hearing and the order following it indicates a more restricted role was allowed by the court. The September 1, 2015 order specifies that Father shall have access to records and that communication with the school shall be limited to accessing school records. Judge Salvador Sarmiento emphasized this restriction on the record as demonstrated by the hearing transcript and in his written notes on the September 1, 2015 order which stress the sole purpose of the order is to obtain records. Judge Sarmiento specifically states that Student's Father is not to "comment, discuss or attempt to influence" when he communicates with the school to obtain records. (Transcript of September 1, 2015 hearing, P.9, L. 7-10). While Judge Sarmiento lifted the restraining order pertaining to visitation between the Student and her father on March 11, 2016, nowhere in that order was the father's role in relation to Student's educational rights amended.

Based on the evidence, Student's Father's request for a continuance of the hearing to allow his participation is Denied. .

IT IS SO ORDERED.

DATE: February 1, 2017

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings