BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: TEHACHAPI UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017020218 ORDER DENYING MOTION TO DISMISS AND GRANTING MOTION TO CONTINUE THE MEDIATION, PREHEARING CONFERENCE AND DUE PROCESS HEARING

On February 3, 2017, District filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Parent on behalf of Student as respondent. In its complaint, District seeks a determination by OAH that its October 28, 2015 psychoeducational assessment is appropriate such that Student is not entitled to an independent educational evaluation at public expense.

On February 9, 2017, Parent filed a motion to dismiss on the grounds that Parent never received the complaint, did not know the basis of the complaint, and that it was not Student's name stated in the scheduling order. On February 10, 2017, Student filed an amendment to the motion to amend, acknowledging both receipt of the complaint and that the complaint correctly stated Student's name. Student also requested a continuance of the mediation and hearing dates so that Parent had time to prepare.

On February 14, 2017, District filed a notice of non-opposition to Student's motion to dismiss, construing Parent's motion to dismiss as a withdrawal of Parent's request for an independent educational evaluation.

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).)

Here, it appears that Parent has withdrawn the objections to District's complaint; accordingly, the motion to dismiss is denied. District did not oppose Student's request for a

continuance. There have been no prior continuances in this matter. Good cause, having been demonstrated, Student's motion for a continuance is granted. However, since the parties did not specify new dates, OAH has selected the dates. All dates are vacated and the matter is continued to the dates set forth below:

Mediation: The mediation is scheduled for **March 23, 2017** and shall take place at **Tehachapi Unified School District, 300 South Robinson Street, Tehachapi, CA 93561 at 9:30 a.m.**

Prehearing Conference: The telephonic prehearing conference is continued to **April 7, 2017 at 3:00 p.m**. OAH will initiate the call to the parties. Prehearing conference statements shall be filed and served by the parties no later than three business days prior to the prehearing conference.

Due Process Hearing: The hearing shall take place on **April 18 and 19, 2017,** and continue day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at **Tehachapi Unified School District, 300 South Robinson Street, Tehachapi, CA 93561.** The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

IT IS SO ORDERED.

DATE: February 17, 2017

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LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings