BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015050567
v.	ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING ADDITIONAL DUE PROCESS HEARING DATES
BRENTWOOD UNION SCHOOL DISTRICT.	

On August 18, 2015, the due process hearing in this matter commenced. At the outset of the hearing, Student's attorney, Nicole Hodge Amey, made a motion to vacate August 25, 26, and 27, 2015, dates previously set for hearing, and continue the matter to dates that did not conflict with another due process hearing (First Conflicting Case) she had set for those dates. Ms. Hodge Amey represented that a request to continue First Conflicting Case was denied because a prior order stated that no further continuances would be granted in First Conflicting Case absent extraordinary good cause.

Brentwood Union School District opposed the motion to continue asserting that it had five witnesses scheduled to appear on those dates who were not Brentwood employees.

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).)

The undersigned ALJ took the motion under submission and considered all available alternatives. Ultimately, the request to vacate August 25, 26, and 27, 2015 was granted. To minimize the harm to Brentwood, its counsel was invited to propose alternate dates.

On August 19, 2015, Brentwood proposed scheduling August 24, 2015, for a full rather than partial day as previously set, and adding September 2, 8, and 9, 2015, as alternate dates based on witness and attorney availability. Ms. Hodge Amey then informed this ALJ that she had another due process hearing (Second Conflicting Case) scheduled for September 8 and 9, 2015, and again a prior order was issued in that case indicating that no further continuances would be granted absent extraordinary good cause. That order further clarified that any conflict existing at the time the order was issued would not constitute extraordinary good cause. Brentwood requested that the matter proceed on the alternate dates it proposed.

Again this ALJ considered carefully the information provided, balancing the fact that OAH does not routinely issue orders restricting further continuance requests with Brentwood's right to proceed with the due process hearing and predictably schedule its witnesses. This due process hearing has already commenced and Brentwood confirmed witness availability for its requested dates. Accordingly, the matter is continued and scheduled as follows:

Monday, August 24, 2015, at 9:30 AM
Wednesday, September 2, 2015, at 9:00 AM
Tuesday, September 8, 2015, at 9:30 AM
Wednesday, September 9, at 9:00 AM

No action was taken by this ALJ regarding the scheduled dates in Second Conflicting Case.

IT IS SO ORDERED.

DATE: August 19, 2015

/s/
JOY REDMON
Administrative Law Judge
Office of Administrative Hearings