BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: TUOLUMNE COUNTY SUPERINTENDENT OF SCHOOLS, CURTIS CREEK ELEMENTARY SCHOOL DISTRICT v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2019020281
PARENT ON BEHALF OF STUDENT, v. TUOLUMNE COUNTY SUPERINTENDENT OF SCHOOLS, CURTIS CREEK ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2019010105 ORDER DENYING REQUEST FOR CONTINUANCE

On February 27, 2019 Tuolumne County Superintendent of Schools and Curtis Creek Elementary School District filed a request to continue the dates in this matter with the Office of Administrative Hearings, based upon a preplanned, prepaid vacation for counsel Marcella Gutierrez. Student filed an opposition on March 4, 2019. Tuolumne and Curtis Creek filed a reply on March 4, 2019.

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:

☒ Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. Counsel for Tuolumne and Curtis Creek failed to establish good cause as a basis for continuance. Tuolumne and Curtis Creek filed a motion to amend that was granted on February 22, 2019. Counsel for Tuolumne and Curtis Creek is an experienced practitioner before OAH and is expected to be familiar with the approximate scheduling timelines. It was Tuolumne and Curtis Creek who filed a motion to amend creating the instant scheduling conflict. However, even had the conflict not been anticipated, respondents have not established good cause for a continuance. The notice of representation filed in this case identified both Ms. Gutierrez and attorney Tilman Heyer as respondents' attorneys of record. Additionally, Mr. Heyer has had significant involvement before OAH in prosecuting this matter. In Tuolumne and Curtis Creek's initial filing, Mr. Heyer is listed as co-counsel. Mr. Heyer is also listed as co-counsel on Tuolumne and Curtis Creek's joint notice of representation filed with OAH on January 7, 2019 in Student's case, 2019010105. Mr. Heyer signed the initial motion to continue on Tuolumne and Curtis Creek's behalf; and further signed Tuolumne and Curtis Creek's reply. Respondents did not assert that Mr. Heyer is unavailable on the dates currently set in this matter. Accordingly, good cause for continuance was not established and the motion is denied.

IT IS SO ORDERED.

DATE: March 5, 2019

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Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings