BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. HUNTINGTON BEACH CITY SCHOOL DISTRICT,	OAH Case No. 2016080016
HUNTINGTON BEACH CITY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016070586 ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING DUE PROCESS HEARING DATES

On December 2, 2016, Student filed a request to continue the dates in this matter with the Office of Administrative Hearings, based upon the unavailability of Student's legal counsel due to the ongoing hearing in OAH Case No. 2016040336 on December 7 and 8, 2016. Student requested hearing dates of December 27 – 29, 2016 or February 14 – 16, 2017. On December 5, 2016, Huntington Beach City School District filed a response that did not oppose the continuance request, but did object to the requested hearing dates because of unavailability of District witnesses, and requested that the hearing be set for December 13 – 15, 2016. OAH granted the parties' original continuance request on September 8, 2016.

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. All dates are vacated. Student established good cause for a continuance due to the ongoing hearing in OAH Case No. 2016040336. However, Student did not establish good cause for a continuance as to the requested dates as District established the unavailability of its witnesses, especially District psychologist who will begin medical leave on January 20, 2017. Further, this consolidated matter takes precedent over OAH Case No. 2016081047, scheduled for hearing for the week of December 12, 2016, as District's case in this consolidated matter was filed a month prior. Therefore, this matter will be set as follows:

Due Process Hearing:	December 13, 2016, at 9:30 AM, December 14 and 15, 2016, at 9:00 AM, and continuing day to day, Monday through Thursday, 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: December 5, 2016

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings