BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017110983
v.	ORDER GRANTING IN PART ETIWANDA SCHOOL DISTRICT'S MOTION TO CONTINUE
ETIWANDA SCHOOL DISTRICT.	

Parent on behalf of Student filed a request for due process on November 27, 2017, naming the Etiwanda School District. On December 19, 2017, District filed a motion to continue the matter, supported by declaration, based on the unavailability of its principal attorney. District states that its principal attorney, who is most familiar with the case and will be representing it at hearing, has another hearing scheduled for the same time before the Office of Administrative Hearings in a case that was filed prior to this case. District requests a two-week continuance of the case, from the presently scheduled date of January 23, 2018, to the week of February 6, 2018.

Student filed an opposition to District's motion on December 27, 2017.[1] Student states that she wishes a prompt resolution of her due process request, and that there is at least one other attorney working with the law firm representing District who should be familiar enough with the case to represent District at hearing. Student also contends that the motion is not timely as it was filed over three weeks after OAH issued the scheduling order in this case.

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

[1] Student timely filed an opposition on December 22, 2017, which, however, was only signed by Student's non-attorney representative. Student timely re-filed her opposition, signed by her attorney of record, upon order of OAH to do so.

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 in part**. All dates are vacated. Although Student's desire for a prompt resolution of her case is valid, District has demonstrated good cause for a short continuance based upon District's counsel conflict with a hearing in another case set to begin the same day as this case is presently scheduled. Further, Student's contention that District did not timely request a continuance is not supported by the facts. District attempted to meet and confer with Student's attorney regarding its need for a continuance less than two weeks after OAH issued the scheduling order, and as soon as its attorney realized that she had a conflict with a hearing in another due process matter.

However, the dates District has requested for the hearing are not available. OAH will be dark the week of February 5 through 9, 2018, due to ALJ annual training. Therefore the hearing will be set as follows, with the hearing beginning on February 20, 2018. Parties should note that the hearing on February 20, 2018, will begin at 1:30 p.m.

Prehearing Conference:	**February 12, 2018, at 3:00 p.m.**
Due Process Hearing:	**February 20, 21, and 22, 2018, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall start at 1:30 p.m. on February 20, 2018, and at 9:00 a.m. on all other days, unless otherwise ordered.**

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: January 5, 2018

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings