BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: NEWPORT-MESA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016090104 ORDER FOLLOWING PREHEARING CONFERENCE AND ORDER GRANTING CONTINUANCE

On November 28, 2016, a telephonic prehearing conference was held before Administrative Law Judge Chris Butchko, Office of Administrative Hearings. Daniel Harbottle, Attorney at Law, appeared on behalf of Newport-Mesa Unified School District. Student's parent appeared on behalf of Student. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. Upon the initiation of the prehearing conference, the parties informed the ALJ that they had reached agreement to seek a continuance in the matter. This matter had been continued at the previous prehearing conference on September 19, 2016, at District's request because it had been unable to contact Student's parent. The new continuance was sought on two grounds. First, the parties wished to have a mediation of the matter. Although a mediation had been set in this matter, it had to be cancelled due to the parties' schedules. Secondly, parent was not available to attend the hearing on the set dates. Because the parties had difficulty in matching their availability for proposed dates, they were unable to move jointly for a continuance in advance of the PHC.

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.) Speedy resolution of the due process hearing is mandated by law, and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code §56505, subd. (f)(3).) At the prehearing conference, the parties presented jointly agreeable dates for the mediation and the hearing.

The parties established good cause for a continuance. Although this is a second continuance in this matter, it is the first sought by parent and follows District's request due to inability to establish contact with her. Parent's unavailability for scheduled hearing dates is good cause for a continuance at Student's request. Accordingly, the joint request for

continuance is granted. **NO FURTHER CONTINUANCES SHALL BE GRANTED IN THIS MATTER.**

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. The ALJ set the following dates upon agreement by the parties.

All dates in this matter are vacated and continued for good cause and the matter shall be set as follows:

Mediation: January 24, 2017, at 9:30 a.m. at the offices of the Newport-Mesa Unified School District, 220 23rd Street, Building D, Costa Mesa, CA 92627.

Telephonic PHC: February 17, 2017, at 3:00 p.m. The prehearing conference will be initiated by an administrative law judge. The parties shall comply with the scheduling order issued in this case and file PHC statements in a timely manner.

Due Process Hearing: February 28, 2017, at 9:30 a.m. and March 1, 2017, at 9:00 a.m., and continuing day to day, Tuesday through Thursday, as needed at the discretion of the ALJ.

2. All other PHC matters shall be addressed at the continued PHC.

3. Settlement. The parties are encouraged to continue their attempts to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

IF A FULL AND FINAL WRITTEN SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE

SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO OAH AT THE FAXINATION LINE at 916-376-6319.

4. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: November 29, 2016

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Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings