BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>SAN JOSE UNIFIED SCHOOL DISTRICT. | OAH Case No. 2018031172<br><br>ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING CONTINUANCE OF PREHEARING CONFERENCE AND DUE PROCESS HEARING |

On August 3, 2018, a telephonic prehearing conference was held before Administrative Law Judge Cynthia C. Fritz, Office of Administrative Hearings. Susan Foley, Attorney at Law, appeared on behalf of Student. Jeffrey Maisen, Attorney at Law, appeared on behalf of San Jose Unified School District. The PHC was recorded.

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

Order to Show Cause. An order to show cause was issued on July 27, 2018, because Student's attorney failed to appear at the prehearing conference that had been trailed to a later time on the same date. Student established good cause for failing to appear at the trailed prehearing conference, and the order to show cause is discharged.

Student's Motion to Continue Hearing. On August 3, 2018, Student made a motion for a short continuance. The parties have negotiated a settlement and are gathering signatures. The settlement agreement should be fully executed during the week of August 6, 2018. San Jose did not oppose the motion.

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 reviewed the requests for good cause and considered all relevant facts and circumstances. The request was granted.

Because of the recent nature of the settlement and the short timeframe for the continuance, good cause for the continuance was found. The hearing is continued on motion of Student and all previous dates are vacated. Dates are reset as follows:

Prehearing Conference: August 10, 2018, at 3:00 p.m.

Due Process Hearing: August 14, 15, and 16, 2018, continuing day to day, at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. the first day and at 9:00 a.m. all other days, unless otherwise ordered. The hearing shall take place at the San Jose district office located at: 855 Lenzen Avenue, Suite 218, San Jose, California 95126.

All other matters shall be discussed at the continued prehearing conference.

IT IS SO ORDERED.

DATE: August 6, 2018

DocuSigned by:
Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings