BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. BENICIA UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017040249
BENICIA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017050972 ORDER FOLLOWING PREHEARING CONFERENCE, CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On September 11, 2017, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Charles Marson, Office of Administrative Hearings. Tania L. Whiteleather, Attorney at Law, appeared on behalf of Student. Jan E. Tomsky, Attorney at Law, appeared on behalf of the Benicia Unified School District. The PHC was recorded.

1. Motion for Continuance. Shortly before the PHC, Benicia requested a continuance of the PHC and the due process hearing due to unavoidable conflicts in her attorney's calendar occasioned by the rescheduling of two other OAH cases. Those reschedulings unavoidably resulted in counsel's unavailability for the dates now scheduled for hearing in this matter (September 20, 2017 and following days.) In Case No. 2017051304, in which hearing began on August 15, 2017, a continuance was twice ordered to accommodate the need to obtain American Sign Language interpreters. The first of those continuances conflicted with the hearing in Case No. 2017050159. The ALJ in the latter case then continued that due process hearing to September 19, 2017, which conflicts with the hearing now scheduled in this matter.

Student did not oppose the motion to continue.

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).)

Benicia has shown good cause for a continuance; the conflicting dates set in other cases were beyond its control. The requested continuance is therefore granted. All dates are vacated. This matter will be set for PHC on October 16, 2017, at 1:00 P.M., and for due process hearing on October 24, 25, and 26, 2017, starting at 9:30 A.M on the first day of hearing and 9:00 A.M. on subsequent days, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

2. All other matters deferred. The resolution of all other matters is deferred to the continued PHC on October 16, 2017, at 1:00 P.M.

IT IS SO ORDERED.

DATE: September 11, 2017

DocuSigned by:
Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings