BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of: | |
| PARENT ON BEHALF OF STUDENT, | OAH Case No. 2017050484 |
| v. | DENYING IN PART AND GRANTING IN PART REQUEST FOR CONTINUANCE AND SETTING HEARING DATES |
| LONG BEACH UNIFIED SCHOOL DISTRICT. | |

On October 24, 2017, Student filed a request to continue the dates in this matter with the Office of Administrative Hearings, based upon unavailable of Student's counsel, Tanya Whiteleather, as she will be in hearing in OAH Case No. 2017040249 on October 31, 2017, the first day of hearing in this matter, and then in on November 14 – 16, 2017, in OAH Case No. 2017040667. Student requested that the hearing in this case be continued to November 21, 2017. On October 25, 2017, Long Beach Unified School District opposed the request based upon the fact that the parties jointly requested to the current dates and OAH issued the continuance order on July 13, 2017, and Ms. Whiteleather has known about this conflict for a while and waited until the eve of hearing to request a continuance.

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:

☒ Denied in Part and Granted in Part. Student has not established good cause for vacating the existing hearing dates, except for October 31, 2017, and continuing the hearing until November 21, 2017. The hearing in OAH Case No. 2017040249 did not commence as scheduled on October 24, 2017, as the school district's attorney was ill, and the hearing should conclude therefore on October 31, 2017. Further, based upon the parties' briefs, Ms. Whiteleather, and District's attorney, Cynthia Yount, are available the week of November 6, 2017. Therefore, this matter will proceed as follows:

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| Due Process Hearing: | November 1, 2017, at 9:30 AM, November 2 and 7, 2017, at 9:00 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. Matter is assigned to Administrative Law Judge Christine Arden |

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: October 26, 2017

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