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. 2016041016 |
| v. | ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND HEARING DATES |
| BENICIA UNIFIED SCHOOL DISTRICT. | |

On August 23, 2016, Student filed a request to continue the hearing in this matter based upon the need to complete an independent psychoeducational evaluation of Student by an independent assessor at Parent's expense prior to hearing. Until a week ago, Parent did not have the financial ability to pay for an independent evaluation of Student. Now that Parent is able to fund the independent evaluation, Student requests a continuance to proceed with the independent evaluation in order to prepare his case for hearing. On August 24, 2016, Benicia Unified School District opposed the request based upon the length of time this matter has been pending.

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).)

As the petitioning party, Student has the burden of proof by a preponderance of the evidence on all issues in this case. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [163 L.Ed.2d 387] (Schaffer).) Congress recognized that school districts have a "natural advantage" in information and expertise, which was addressed by Congress when it required schools to

safeguard parents' procedural rights and to share information with them. (*Ibid*. at p. 60, citing *School Com. Of Burlington, Mass. v. Department of Education of the Commonwealth of Mass.* (1985) 471 U.S. 359, 368, 105 S.Ct. 1996, 85 L.Ed. 2d 385.) Based upon parents' right to an independent educational evaluation for their child, the IDEA "ensures parents access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion." (*Ibid*. at pp. 60-61.) Parents are "not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition." (*Ibid*. at p. 61.)

Here, Parent is requesting a continuance of the hearing in order to have an independent assessor conduct a psychoeducational evaluation of Student. Parent was previously unable to obtain an independent evaluation of Student due to financial hardship. Parent is now able to fund an independent psychoeducational evaluation of Student, which Student intends to use as evidence in meeting his burden of proof at hearing. While the instant matter has been pending since April 2016, the interests of justice will be served in continuing the matter based on the above-specified reasons.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Student has established good cause to continue the hearing. The request is:

☒ Granted. All dates are vacated.

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| Prehearing Conference: | November 29, 2016, at 1:00 p.m. |
| Due Process Hearing: | December 6, December 7, and December 8, 2016, beginning at 9:30 a.m., on the first day of hearing. The hearing will continue day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. |

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. As the matter has been pending since April 2016, no further continuances will be granted without a showing of substantial good cause.

IT IS SO ORDERED.

DATE: August 24, 2016

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DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings