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>PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT. | OAH Case No. 2016080478<br><br>ORDER GRANTING JOINT MOTION FOR RECONSIDERATION OF REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING |

On September 8, 2016, the parties filed a joint request for reconsideration of the order denying their prior joint request to continue the prehearing conference and hearing dates in this matter in excess of 90 days. The request for reconsideration, unlike the original request, is supported by the declarations of Palos Verdes Peninsula Unified School District's counsel and special education director. The parties base their request on the busy calendar of an attorney in the firm representing District, school breaks, and the unavailability of one witness to testify as an expert and percipient witness after surgery on November 30, 2016 and during a four to six week recovery period.

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:

☒ Granted, with dates set by OAH. All dates are vacated. This matter will be set as follows:

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| Prehearing Conference: | November 18, 2016 at 1:00 PM |
| Due Process Hearing: | November 29-December 1, 2016, at 9:30 AM first day, 9:00 AM after, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. |

The parties have established good cause for a continuance, but not one in excess of 90 days. The busy schedule of one attorney in the firm representing District does not establish that counsel is unavailable "due to death, illness or other excusable circumstances" until January 2017. Conflicting matters may resolve prior to the continued hearing dates, and this order grants adequate time for a different member of the firm representing District to be assigned and prepare for this hearing.[1] School breaks do not establish good cause for a continuance. To accommodate the witness who is unavailable from November 30, 2016, the parties may request that she testify on the first day of hearing, or that the judge hearing this matter allow the witness to testify out of order at a later date, or telephonically, if the issues to be addressed by that witness cannot be adequately addressed by the testimony of available witnesses.

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: September 13, 2016

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Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

[1] The declarant attorney may not be the only attorney responsible for this matter, as listed on District's filings in these proceedings.