BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017041132
v.	ORDER GRANTING REQUEST FOR CONTINUANCE; SETTING NEW PREHEARING CONFERENCE AND DUE PROCESS HEARING DATES
TEMECULA VALLEY UNIFIED SCHOOL DISTRICT.	

On June 8, 2017, District filed a motion to continue the hearing dates in this matter with the Office of Administrative Hearings. District's counsel had another hearing with OAH which conflicted with the hearing dates in this case, and requested a first hearing continuance to September 5, 2017. District represented it was unavailable for a summer hearing because District was out for summer break. On June 9, 2017, Student filed an opposition stating that a lengthy continuance would prejudice Student by requiring Parent to fund a non-public school for a longer period hearing and requested that the hearing be continued for one day to June 21, 2017, and that Parent preferred a summer hearing because she was a teacher and did not wish to miss work when the school year started. Student represented that either Student, or his counsel, would not be available for hearing June 29, 2017 to July 16, 2017; July 27, 2017 through August 12, 2017; and key experts would not be available July 7, 2017 through July 16, 2017, and the entire month of August 2017.

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) and (c) (2006); Ed. Code, §§ 56502, subd.(f), 56505, subd.(f)(3); Cal. Code Regs., title 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. District's request for a first and brief hearing continuance because its counsel was engaged in another OAH hearing was good cause. District's representation that it would not be available the entire summer for a hearing was unreasonable. However, despite representing that he preferred a summer hearing date, Student provided very limited dates of his summer availability that would permit OAH to schedule a hearing. Student did not represent he was unavailable to proceed with the hearing on September 5, 2017. District articulated good cause for the continuance, and the hearing shall be continued to September 5, 2017, with a prehearing conference set for August 28, 2017, at 10:00 a.m.

All dates are vacated and continued as follows:

Prehearing Conference:	August 28, 2017 at 10:00 a.m.
Due Process Hearing:	September 5, 2017 at 1:30 p.m., September 6 and 7, 2017, at 9:00 a.m., and continuing 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.

IT IS SO ORDERED.

DATE: June 12, 2017

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Sabrina Kong
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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings