BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT,	OAH Case No. 2016080996
PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016050515 ORDER GRANTING NEWPORT-MESA UNIFIED SCHOOL DISTRICT'S REQUEST FOR CONTINUANCE AND SETTING HEARING DATES

On February 2, 2017, Newport-Mesa Unified School District filed a request to continue the dates in this matter with the Office of Administrative Hearings, based upon unavailability of District personnel who will be testifying in OAH Case No. 2016090101 that was continued by OAH on January 31, 2017. On January 3, 2017, Student filed a response that did not oppose the continuance request, but did object to District's request to continue this matter until the end of March 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) & (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 in part. All dates are vacated. District did establish good cause for a continuance due to the conflict with OAH Case No. 2016090101, in which the hearing commenced and then continued after the completion of preliminary matters. However, District did not establish good cause for a continuance until the end of March 2017. Student established that since his consolidated matter is older than OAH Cases Nos. 2016101114 and 2016090853, scheduled for hearing on February 14 – 16, 2017, that Student's case should be heard that week. Therefore, this matter will be set as follows:

Due Process Hearing:	February 14, 2017, at 9:30 AM, February 15 and 16, 2017, at 9:00 AM, 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: February 3, 2017

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