BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018060459 ORDER FOLLOWING PREHEARING CONFERENCE; RESCHEDULING PREHEARING CONFERENCE AND CONTINUING DUE PROCESS HEARING

On October 5, 2018, a telephonic prehearing conference was held before Administrative Law Judge Sabrina Kong, Office of Administrative Hearings. Mother appeared on Student's behalf. Attorney Patrick Balucan appeared on Los Angeles School District's behalf. The PHC was recorded.

Student's counsel withdrew as attorney of record on July 26, 2018. Mother did not file a PHC statement and was not aware of the PHC until she received Los Angeles's PHC statement. Mother requested time to familiarize herself with filings and evidentiary matters in preparation for hearing and/or hire counsel, and asked for a very brief continuance so the hearing could timely proceed. Both parties agreed to continue the hearing to November 6, 7, and 8, 2018.

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).)

A brief hearing continuance is granted so Mother could familiarize herself with filings and evidentiary matters in preparation for hearing and/or hire counsel. All dates are vacated, and this matter will be set as follows:

Telephonic Prehearing Conference: October 29, 2018, at 10:00 a.m. All parties shall timely file PHC statements.

Due Process Hearing: November 6, 7, and 8, 2018, continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at OAH's office located at 15350 Sherman Way, Suite 300, Van Nuys, CA 91406. The hearing shall begin at 9:30 a.m. on the first day of the hearing, and end at 5:00 p.m., and at 9:00 a.m. all other days, and end at 4:30 p.m., unless otherwise ordered.

OAH has not received a copy of Los Angeles's response. Los Angeles shall have two business days from the date of the PHC to file its response with OAH. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

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 5, 2018

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Sabrina Kong
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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings