BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. CARLSBAD UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016110599 ORDER FOLLOWING PREHEARING CONFERENCE OF DECEMBER 12, 2016; ORDER CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On December 12, 2016, Administrative Law Judge Darrell Lepkowsky, Office of Administrative Hearings, held a telephonic prehearing conference. Student's mother appeared on his behalf. Justin Shinnefield, Attorney at Law, appeared on behalf of the Carlsbad Unified School District. The ALJ recorded the PHC.

Based upon discussion with the parties, the ALJ issues the following order:

1. Motion to Continue. On December 9, 2016, District filed a motion to continue the hearing, which Student opposed during the prehearing conference. District requested a short continuance based upon the pre-planned vacation of its attorney, which conflicts with the present hearing dates, as well as its attorney's conflict with two older pending OAH hearing.

Student opposed the conflict based on the prejudice to him if the hearing is delayed because he is not in school and believes that if he prevails at hearing, his issues with his education will be addressed and resolved.

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).)

Student has provided valid reasons for not continuing the hearing date. However, District provided good cause for the short, four-week continuance it requested. Its counsel has a previously planned vacation, and is assigned to two other OAH matters which are scheduled for hearing the weeks of December 28, 2016, and January 3, 2017, respectively. Additionally, the brief delay requested will not substantially burden Student. Should Student prevail on any or all of his case, reimbursement of his parents' expenses incurred for his education during the time in question, as well as an order for compensatory education, may be appropriate remedies to remedy any losses suffered.

Given the totality of the circumstances, and the fact that this is an initial request to continue, District has shown good cause for the requested continuance and its motion to continue is granted. The present hearing dates are vacated. This matter is continued as follows:

PREHEARING CONFERENCE: January 6, 2017, at 10:00 a.m.

DUE PROCESS HEARING: January 17, 18, and 19, 2017, beginning at 1:30 p.m. on January 17, 2017, and at 9:00 a.m. all other days, and continuing day to day Monday through Thursday, at the discretion of the ALJ.

2. The hearing is presently set to take place at the District's offices located at 6225 El Camino Real, Carlsbad, California, 92009. District shall file a certificate that the proposed location complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.) and all laws governing accessibility of government facilities to persons with disabilities by no later than **5:00 p.m. on December 16, 2016**.

3. District has agreed to make available for hearing any of its employees listed as witnesses by Student in his prehearing conference order, who are under District's control as of the date of the hearing. If Student requires subpoenas for any non-District witnesses, he may obtain them by contracting OAH at (916) 263-0880.

4. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A

VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY **FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.**

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

IT IS SO ORDERED.

DATE: December 12, 2016

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings