BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015080076
v.	ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND HEARING DATES
TUSTIN UNIFIED SCHOOL DISTRICT.	

Student filed his complaint against Tustin Unified School District on July 29, 2015. At the September 14, 2015 prehearing conference, the Office of Administrative Hearings granted Student's continuance request, and set the hearing for December 15 and 16, 2015. On November 25, 2015, Student filed a motion to amend the complaint. OAH granted the motion to amend on December 2, 2015, which reset the hearing dates. The new hearing is scheduled to commence on January 26, 2016.

On January 15, 2016, District filed a request to continue the dates in this matter, based upon the unavailability of its legal counsel. On January 18, 2016, Student opposed the request based upon District's failure to show good cause for a continuance and Student's right to have this matter heard within the legal timelines as this matter has been pending since July 29, 2015. District filed a response on January 20, 2016.

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. All dates are vacated. District established good cause for a brief continuance due to the unavailability of its legal counsel due to previously scheduled court appearances and special education mediations and hearings. As to the delay in this matter, Student overlooks that both delays in this matter were requested by Student in the continuance request first and then the motion to amend. Therefore, this matter will be set as follows:

Prehearing Conference:	February 12, 2016, at 1:00 PM
Due Process Hearing:	February 23, 2016, at 9:30 AM, February 24 and 25, 2016, 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: January 20, 2016

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings