BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

# IN THE MATTER OF:

# PARENT ON BEHALF OF STUDENT,

v.

# FORTUNA UNION HIGH SCHOOL DISTRICT.

# OAH CASE NUMBER 2019120123

## ORDER GRANTING REQUEST FOR CONTINUANCE

On January 14, 2020, Fortuna filed with the Office of Administrative Hearings a request to continue this matter. Fortuna's counsel is set for hearing in an earlier filed case on the same day this matter is to begin. Fortuna request that mutually agreeable hearing dates be selected during the currently scheduled prehearing conference. On January 16, 2020, Student filed a non-opposition to Fortuna's motion.

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. (Ed. Code, § 56505, subd. (f)(3); 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 or imposing conditions on the continuance; and any other relevant fact or circumstance. (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. Fortuna's request to select mutually agreeable hearing dates during the prehearing conference is DENIED. That would be akin to a trial setting conference which OAH does not provide. Additionally, that would leave this matter without hearing dates scheduled until the PHC, again something OAH does not provide. Accordingly, the matter is set as follows:

Prehearing Conference will be held on March 2, 2020, at 1 PM.

Due Process Hearing will be held on March 10, through 12, 2020. The hearing shall begin at 9:30 AM the first day, and at 9:00 AM on all other days unless otherwise ordered. The hearing shall continue day to day, 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 their availability to testify. Good

cause for witness unavailability is not established by failing to properly notify or subpoena a witness. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date.

IT IS SO ORDERED.

DATED: January 16, 2020

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Joy Redmon
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Joy Redmon
Presiding Administrative Law Judge
Office of Administrative Hearings