ANTE LA
OFICINA DE AUDIENCIAS ADMINISTRATIVAS
ESTADO DE CALIFORNIA

En el caso de: TAHOE TRUCKEE UNIFIED SCHOOL DISTRICT. v. PARENT ON BEHALF OF STUDENT,	Caso OAH No. 2018020394 ORDER FOLLOWING PREHEARING CONFERENCE AND CONTINUANCE OF PREHEARING CONFERENCE AND DUE PROCESS HEARING

On March 23, 2018, a telephonic prehearing conference was held before Administrative Law Judge Cynthia Fritz, Office of Administrative Hearings. Alyssa Bivens and Marcella Gutierrez, Attorneys at Law, appeared on behalf of Tahoe Truckee Unified School District. Mother and Father appeared on behalf of Student. Spanish interpreter, Sylvia Gonzalez, participated for interpreter services only. The PHC was recorded.

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

Continuance of PHC and DPH. On March 14, 2018, District filed a Motion to Narrow Issues to Issues in Dispute. On March 19, 2018, District filed a declaration with over 50 pages of evidence in support of its motion. The Office of Administrative Hearings sent the motion, declaration, and evidence in support of District's motion for Spanish translation for Parents whose primary language is Spanish. The translated documents are not yet complete. Accordingly, Parents have not had an opportunity to read and respond to District's motion and accompanying declaration and evidence. In the interest of due process, the undersigned ALJ moved to continue the matter until the forgoing can be accomplished. District opposed the continuance stating the above reasons did not establish good cause, and that granting a second continuance in this case extends the 45 day time period to resolve this matter. Parents did not oppose the continuance request.

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 considered all relevant facts and circumstances. A continuance is granted. All dates are vacated. Good cause exists for the continuance as District filed a motion on March 14, 2018 and supporting evidence on March 19, 2018. In the interest of due process, time is needed to translate the 50 plus pages of evidence and declaration, serve it on pro per Parents in Spanish and give them the opportunity to respond prior to the prehearing conference and due process hearing. The new dates are set as follows:

Prehearing Conference:	April 20, 2018, at 10:00 a.m.
Due Process Hearing:	April 24, 2018, at 9:30 a.m., April 25 and 26, 2018, at 9:00 a.m. and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

Student made a motion to start the Due Process Hearing at 10:00 AM and to have documents served in a particular way, such as in specific envelopes. Student's motions were denied as no compelling justification for either request was provided.

Scheduling Order for District's Motion to Narrow Issues to Issues in Dispute. A scheduling order was set for the District's Motion to Narrow Issues to Issues in Dispute as follows:

Last Day for Student's Response:	April 10, 2018
Last Day for District's Reply:	April 13, 2018

An order will be issued in writing for this motion.

Notice to Witnesses. 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.

Required Filings with OAH. Parents are required to file a PHC statement, The PHC statement should specify their understanding of the issues for hearing and listing the witnesses they intend to call and the documents they intend to introduce at the time of hearing. **Parents shall file their PHC statement no later than Monday, April 16, 2018.** Parents were reminded that any document filed with OAH must be accompanied by a proof of service showing that they provided a copy of the same document to Tahoe Truckee's

counsel and specifying how and when the document was provided to opposing counsel. The ALJ will not read or consider any document that does not include a proof of service.

Parents were reminded that documents they intend to introduce into evidence at hearing should not be filed with OAH prior to hearing. Rather, all documentary evidence must be provided to the opposing party at least five business days prior to the start of the hearing.

Other Matters. All other matters relevant to preparing for hearing will be addressed at the telephonic PHC on April 20, 2018.

IT IS SO ORDERED.

DATE: March 23, 2018

DocuSigned by:
Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings