BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
GARVEY SCHOOL DISTRICT,	OAH Case No. 2015120681
v.	ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING DISTRICT'S MOTION TO CONTINUE PREHEARING CONFERENCE AND HEARING DATES
PARENT ON BEHALF OF STUDENT.	

On January 8, 2016, a telephonic prehearing conference was held before Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings. Geoffrey R. Winterowd, attorney at law, appeared on behalf of Garvey School District. Kevin Hernandez and Carol S. Jung, attorneys at law, appeared on behalf of Student. The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. District's Motion for First Continuance. District filed this matter on December 16, 2015, and OAH scheduled a prehearing conference for January 8, 2016, and a hearing of January 20, 2016. On January 8, 2016, attorney Sharon A. Watt filed a motion to continue the prehearing conference and the hearing because the administrative law judge at the hearing in which she is presently appearing added additional hearing days for January 19 and 21, 2016. This conflicts with the January 20, 2016 hearing date in this matter..

District requests a continuance to May 2016 because Ms. Watt's unavailability. By way of declaration, Ms. Watt states she has five weeks of prepaid scheduled vacation and hearings in other OAH matters throughout January, February, March, and April 2016. The declarations of Ms. Watt and legal administrator Brittany Odom list Ms. Watts' OAH cases and hearing dates. Both Ms. Watts' and Ms. Odom's declarations state that Ms. Watt has a hearing scheduled for March 14, 15, and 16, 2016, in OAH Case No. 2014080052. However, OAH records indicate that this matter had previously settled and, therefore, no hearing is scheduled. Student's counsel acknowledges that Parent will be available for these dates. Also, based on the declarations, Ms. Watt is not scheduled for March 17, 2016.

Student opposes the continuance to May 2016, noting that Student requested District to fund independent educational evaluations, for speech and language and psychoeducational, in November 2015. District did not file a due process to establish its assessments to be legally appropriate until December 2015. Student argues that if the hearing is continued to May 2016, a decision will not issue until the completion of the school year. Such a delay would be

prejudicial to Student and contrary to the statutory scheme of requiring a District to fund requested IEE's or file a due process for determination, within a reasonable time.

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 substitution of an attorney when the substitution is required in the interests of justice. (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. (See Cal. Rules of Court, rule 3.1332(d).)

District has shown good cause for a continuance based on the pendency of the other ongoing matter on January 20, 2016. However, District has not demonstrated good cause for a continuance to May 2016. Such a lengthy continuance is contrary to the IDEA's intent to resolve questions regarding districts' funding of IEE's in a reasonable time frame. Ms. Watts' heavy hearing calendar is a consequence of her position as the sole legal representative for District in due process hearings. This is an insufficient showing of good cause for a continuance which will result in an unreasonable delay.

All dates are vacated. The District's motion to continue is granted, as discussed above. This matter will be set as follows:

Prehearing Conference:	March 4, 2016, at 1:00 p.m.
Due Process Hearing:	March 14, 15, 16, and 17, 2016, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The first day of hearing shall commence at 1:30 p.m.; all remaining hearing days shall begin at 9:00 a.m. The hearing shall take place at District's offices, 2730 N. Del Mar Avenue, Rosemead, CA 91770.
NOTE:	Since this is a lengthy first continuance, no further continuances will be granted absent a showing of substantial good cause.

2. Accessibility of Hearing and Mediation Facilities

As stated in the initial scheduling order, the named local educational agency – here, Garvey School District – shall provide facilities for the scheduled mediation and hearing that fully comply with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C.A. § 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. The named local educational agency shall certify that the facilities used for this

case comply with the law. ALJ Woosley reminded District's counsel, during the PHC, of the District's duty to file certification that the facilities are in full compliance.

IT IS SO ORDERED.

DATE: January 8, 2016

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings