BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BERKELEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018020102 ORDER GRANTING REQUEST FOR CONTINUANCE IN PART AND SETTING HEARING DATES

On June 11, 2018, the parties filed with the Office of Administrative Hearings a joint request to continue the hearing dates in this matter due to road closures and public transit delays anticipated in downtown Oakland for the first day of hearing, June 12, 2018. The location for this hearing is the OAH Office in downtown Oakland. The city of Oakland recently announced that it is expecting a million visitors to the area to attend a parade recently scheduled to celebrate the Golden State Warriors' June 8, 2018 NBA Championship title victory. The parties anticipate this city event will hinder the ability of parties and witnesses to participate in the hearing.

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 in part. All dates are vacated. The parties have established good cause to continue the hearing. However, they have not established good cause to continue this matter until July 31, 2018. Oakland Unified School District's counsel indicates that he is unavailable for hearing on June 26, 2018, because of three conflicting OAH matters. However, this matter takes precedence over two of those matters which were filed later. As to the third matter, OAH Case Number 2017120075, another attorney from Oakland's counsel's firm also appears on the notice of representation. Having considered the parties' declarations regarding their unavailability, and the fact that his matter has been pending since February 2018 due to Student's requests to amend her complaint, this matter will be set as follows:

Due Process Hearing:	June 26, 2018, at 9:30 a.m., June 27-28, 2018, at 9:00 a.m., and continuing 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 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: June 11, 2018

DocuSigned by:
Theresa Ravandi
180B9BDB98E5424...

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings