BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. VACAVILLE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015090255 ORDER DENYING REQUEST FOR CONTINUANCE OF HEARING ON FEBRUARY 22, 2016

On February 10, 2016, Student filed a request to continue the first scheduled day of hearing in this matter, February 22, 2016. Student requested that the hearing "go dark" on February 22, 2016, and begin on February 23, 2016, because her counsel, Tania Whiteleather, is scheduled to appear in a United States District Court in Southern California in another matter. This is the fourth request for a continuance in this matter and the third based upon the unavailability of Student's counsel. Vacaville filed an opposition to the motion on February 12, 2016.

On February 1, 2016, Student asked for a continuance in this matter due to illness of Ms. Whiteleather. At that time, the hearing was scheduled to begin the next day. Attached to that motion was a declaration from Ms. Whiteleather with a myriad of dates on which she had other matters scheduled. The February 22, 2016 appearance in District Court was not among them. That motion for continuance was granted on February 1, 2016, and served on the parties, including Ms. Whiteleather, the same day.

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).) The Office of Administrative Hearings 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:

☒ Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. In her motion to continue this case, or "go dark" on February 22, 2016, Student simply states that Ms. Whiteleather has a Southern California appearance scheduled in District Court. There is no indication when the District Court matter was scheduled, why she did not disclose this in her earlier request, or what steps she took, if any, to change the District Court appearance based upon this matter being in conflict or have another attorney appear in District Court. Further, Vacaville correctly points out in its opposition that this matter has been pending since August 2015 and that there is no requirement that when an attorney has conflicting dates before OAH and District Court that the District Court date has automatic precedence. Vacaville has been asked to have its party representatives and witnesses available on several occasions for dates that were vacated based upon Ms. Whitleather's schedule and illness. The party representatives and witnesses have been secured for the hearing as scheduled currently. Therefore, the request is denied and the matter will proceed on February 22, 2016, and continue as previously ordered.

IT IS SO ORDERED.

DATE: February 16, 2016

DocuSigned by:
Margaret Broussard
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MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings