BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: NEWPORT-MESA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016090101 ORDER GRANTING CONTINUANCE, STRIKING WITNESS TESTIMONY AND ADMISSION OF DOCUMENTS AND SETTING ADDITIONAL HEARING DATES.

On January 31, 2017, at the commencement of the hearing in this matter, Student's mother made an oral request to continue the dates of the hearing based on her illness and the illness of her children. Student's mother was placed under oath at which time she testified that both children were running high fevers and that she was coming down with the same illness herself. Newport-Mesa opposed the request based upon the previous denial of Student's request for continuance on January 23, 2017. After arguments were heard, Mother agreed to appear telephonically and withdrew her motion to continue. Newport-Mesa did not object to the telephonic appearance. The matter was continued to 1 pm on January 31, 2017.

The hearing commenced at 1 p.m. as scheduled. Opening statements were made and the first witness began testimony. The telephone connection was not reliable. It was established that Student's mother could not hear the undersigned when Student's mother was speaking such that the undersigned was unable to intervene and make rulings. It was also established that Student's mother could not hear all of the witness testimony.

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).)

Given the facts and circumstances described above, telephonic participation was untenable. Student's mother stated on the record she had no child care for the children for February 1, 2017 and that her two children both had high fevers. The health status of one child was supported by evidence of an emergency room visit on January 30, 2017.

Newport-Mesa counsel objected to the continuance to the following week based on calendar conflicts involving other OAH Special Education hearings. A continued Due Process hearing which has actually begun takes precedence over all other previously scheduled hearings.

Based on the evidence submitted and the testimony of Student's mother, as well as the inability to conduct the hearing telephonically, the matter was continued to February 7, 2017 at 9:30 and February 8, 2017 at 9:00 a.m. at the offices of Newport-Mesa Unified School District at 2985-A Bear Street, Costa Mesa, CA 92626. Student's mother was ordered to appear in person on February 7, 2017 at the appointed place and time if she wished to participate in the hearing as it would proceed and **no further continuances would be granted**. Because of the difficulty with the telephone connection and in an abundance of caution, witness testimony of the one witness who had just begun her testimony and the two documents that were admitted are stricken from the record and the testimony will begin anew on February 7, 2017.

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: February 01, 2017

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings