BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ELK GROVE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016100772 ORDER DENYING REQUEST FOR CONTINUANCE AND CHANGING HEARING LOCATION

On November 3, 2016, Elk Grove Unified School District filed a request to continue the dates in this matter with the Office of Administrative Hearings, based upon witness unavailability, District office unavailability and a desire to mediate. On November 7, 2016, Student, opposed the request, in part because he does not intend to call any of the unavailable witness on the dates for hearing for which those witnesses are unavailable.

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:

☒ Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. For an opposed continuance, even on a first request, a showing of good cause is required. As Student will put on his case first and has stated that he does not intend to call any of the unavailable witnesses, it is denied for this

reason. As to the closure of the District office, OAH will provide a courtroom for the hearing, as it is located nearby the District. As to the request for mediation, although the parties agreed to waive resolution session and participate in mediation, it was Elk Grove who cancelled mediation. Student offered several other dates for mediation prior to the scheduled hearing date which Elk Grove did not accept. Student made himself available for mediation. Finally, as Student previously made himself available for mediation and Student now affirmatively refuses to participate in mediation, no continuance will be granted for the purposes of mediation. Should the parties agree on a date for mediation, please notify OAH and a mediation will be scheduled.

ORDER

1. The request for continuance is denied.

2. The hearing will be held at:

Office of Administrative Hearings
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833

IT IS SO ORDERED.

DATE: November 8, 2016

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