BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN MARCOS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017101012 ORDER GRANTING DISTRICT'S REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On December 13, 2017, San Marcos Unified School District filed a motion for a second continuance of the hearing dates in this matter with the Office of Administrative Hearings. The prehearing conference in this matter is currently set for January 8, 2018, and the hearing on January 16-18, 2018.

District's motion is based upon 1) the unavailability of a critical witness on the dates set for hearing, and 2) its desire to mediate. District's motion was supported by a declaration under penalty of perjury by District's attorney, who asserted that District's witness would not be available until June 2018, for personal reasons. District's counsel also asserted that she conferred telephonically with an educational advocate working for Student's attorney, who advised her that Student's attorney opposed a second continuance. District's motion offered no new proposed dates.

On December 18, 2017, Student's attorney filed an opposition to District's motion, asserting that, while Student was willing to consider a short continuance to mutually agreeable dates, Student was not willing to continue the hearing to dates in June 2018. Student instead requested a status conference to discuss setting mutually agreeable dates, but offered no proposed dates.

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 parties have had the opportunity to mediate this case, and Student cancelled the mediation the day prior. Accordingly, District's request to mediate does not establish good cause for a continuance.

District's request fails to offer reasonable new dates that comply with the mandate for speedy resolution of these due process matters under the Individuals with Disabilities Education Act. However, the unavailability of a critical District witness on the dates currently scheduled constitutes good cause for a short continuance.

District's motion for continuance is granted for good cause. The prehearing conference is continued to **February 16, 2018 at 1:00 p.m.** The due process hearing is continued to **February 27, 2018 at 9:30 a.m., February 28, and March 1, 2018 at 9:00 a.m.**, and continuing day to day Monday through Thursday as determined by the ALJ.

IT IS SO ORDERED.

DATE: December 26, 2017

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Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings