BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018080795
v.	ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING MOTION TO CONTINUE, AND SETTING HEARING AND PREHEARING CONFERENCE
POWAY UNIFIED SCHOOL DISTRICT.	

On November 16, 2018, a telephonic prehearing conference was held before Administrative Law Judge Christine Arden, Office of Administrative Hearings. Wendy Dumlao, Attorney at Law, appeared on behalf of Student. Justin Shinnefield, Attorney at Law, appeared on behalf of Poway Unified School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Poway's Motion to Continue, and Continued Hearing and Prehearing Conference Dates, Times, and Location. On November 13, 2018, Poway filed a motion to continue the due process hearing and the prehearing conference on the grounds that: Poway does not have a room available in which to hold the hearing on November 26 – 28, 2018; and Poway's counsel is not available until after March 1, 2019, due to commitments on other cases. On November 16, 2018, Student filed opposition to Poway's motion based on the ground that Student would suffer prejudice if the unreasonably long continuance requested by Poway was granted. Student stated he would agree to a brief continuance and proposed three alternative hearing dates before the end of 2018.

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).)

Having shown good cause, the request for continuance was granted at the PHC for the reasons stated on the record, and dates were set as follows:

The hearing shall take place on **December 11, 12, and 13, 2018,** and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at Poway's offices located at 15250 Avenue of Science, San Diego, CA 92128. The hearing shall begin at **9:30 a.m**. the first day of the hearing and at **9:00 a.m**. all other days, unless otherwise ordered.

The continued telephonic prehearing conference shall take place on **December 3, 2018, at 1:00 p.m.** All prehearing conference matters shall be addressed at that time.

PHC statements, if any, and prehearing motions must be filed with OAH at least 3 business days before the continued PHC. Poway shall file a certificate verifying that the hearing facility complies with the American with Disabilities Act of 1990.

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.

2. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY **EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT** https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb **.**

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

If the parties settle the matter subject to school board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall

also submit a request for a status conference and provide the date of the school board meeting at which board approval of the set OAH will not cancel the hearing dates without this information.

3. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: November 16, 2018

DocuSigned by:
Christine Arden
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CHRISTINE ARDEN
Administrative Law Judge
Office of Administrative Hearings