BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017110183 ORDER FOLLOWING PREHEARING CONFERENCE; GRANTING REQUEST TO CONTINUE; SETTING DUE PROCESS HEARING; GRANTING MOTION TO AMEND; SETTING PREHEARING CONFERENCE

On January 12, 2018, a telephonic prehearing conference was held before Administrative Law Judge Paul H. Kamoroff, Office of Administrative Hearings. Margaret H. Adams, Attorney at Law, appeared on behalf of Parents and Student. Ernest L. Bell, Attorney at Law, and Tiffany Hazlewood, District's Program Specialist, appeared on behalf of San Dieguito Union High School District. The PHC was recorded.

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

1. Motion to Continue: On January 12, 2018, Student submitted a motion to continue the due process hearing dates, based upon the recent death of his expert witness, Dr. Lori Riddle-Walker. Student discovered her death on Wednesday, January 10, 2018, and seeks a brief continuance to prepare his remaining witnesses in the areas of testimony that was previously attributable to Dr. Riddle-Walker. District opposed the motion.

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:

☒ Granted. All dates are vacated. This matter will be set as follows:

Due Process Hearing:	January 30, 31, and February 1, 2018, and continuing day by day thereafter, Monday through Thursday, at the discretion of the Administrative Law Judge. The hearing shall begin at 9:30 a.m. the first day, and at 9:00 a.m. each subsequent day, unless otherwise ordered.

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. 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.

2. Motion to Amend: During the prehearing conference, Student requested to amend the complaint to add an issue regarding an individualized education program that was not identified in Student's original complaint. District opposed the request.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The motion to amend is timely and is granted. **Student shall submit his first amended complaint by 5:00 p.m. on January 17, 2018. The amended complaint shall be deemed filed at that time, and OAH will vacate the hearing dates and issue a scheduling order with the new dates. Should Student fail to submit an amended**

complaint by 5:00 p.m. on January 17, 2018, the due process hearing shall proceed on January 30, 31, and February 1, 2018, and OAH will initiate a second telephonic prehearing conference for this matter on January 19, 2018, at 10:00 a.m.

IT IS SO ORDERED.

DATE: January 16, 2018

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Paul Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings