BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ACTON-AGUA DULCE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017110083 ORDER FOLLOWING PREHEARING CONFERENCE; CONTINUANCE OF PREHEARING CONFERENCE AND HEARING GRANTED; MEDIATION DATE SET; JANUARY 19, 2018 ORDER TO SHOW CAUSE RE SANCTIONS

On December 15, 2017, a telephonic prehearing conference was held before Administrative Law Judge Sabrina Kong, Office of Administrative Hearings. Attorney Carolyn Olsen appeared on Student's behalf. Misty Cervantes, special education coordinator, appeared on Acton-Agua Dulce Unified School District's behalf. The PHC was recorded.

On December 15, 2018, the parties jointly requested a first continuance of the hearing from December 27, 2017 to March 5, 6, or 7, 2018, and set mediation for January 22, 2018 so the parties have an opportunity to mediate. The parties did not timely file the request for continuance or file any prehearing conference statements, which were due on December 13, 2017. ALJ spent at least 15 minutes waiting for District to locate someone to participate in the PHC. When Ms. Cervantes got on the line, she represented that she needed to locate Angela Gordon, District's attorney about District's participation in the PHC. However, at the time of the pre-hearing conference, there had been no notice of representation filed on behalf of the District. After requesting approximately another five minutes to locate District's attorney, Ms. Cervantes participated in the PHC.

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).)

ALJ found good cause for granting a first continuance of the matter so the parties could participate in mediation. Student's request for the hearing continuance is granted. All dates are vacated, and this matter will be set as follows:

Mediation: January 22, 2018 at 9:30 a.m.

Telephonic Prehearing Conference: February 23, 2018 at 3:00 p.m. **All parties shall timely file PHC statements.**

Due Process Hearing: March 6, 2018 at 9:30 a.m., March 7, and 8, 2018 at 9:00 a.m., at District's office located at 32248 Crown Valley Road, Acton, CA 93510, and continuing day to day, Monday through Thursday, as needed, at the discretion of the ALJ.

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.

Order to Show Cause Regarding Sanctions

The telephonic order to show cause shall be set for January 19, 2018 at 9:00 a.m. as to why sanctions should not be issued for the parties' failure to file a timely request for a hearing continuance; for the parties' failure to file any prehearing conference statements; and for District's failure to have a representative timely available for the December 18, 2017 PHC. Parties shall file all documents including declarations under the penalty of perjury in support of their positions by January 12, 2018, at noon.

DATE: December 19, 2017

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Sabrina Kong
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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings