BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2018081172
v.	ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING REQUEST FOR CONTINUANCE, AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING DATES
POWAY UNIFIED SCHOOL DISTRICT.	

On February 4, 2019, a telephonic prehearing conference was held before Administrative Law Judge Linda Johnson, Office of Administrative Hearings. Cara Lucier, Attorney at Law, appeared on behalf of Student. Danielle Gigli, 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. Request for Continuance. During the PHC the parties represented that they both have a conflict with the currently scheduled due process hearing dates. Both Poway and Student's attorney will be in a hearing on OAH Case No. 2018080664 on February 12, 13, and 14, 2019; that case takes precedence over this one as the ALJ in that matter granted a brief continuance on the eve of hearing due to the illness of district's counsel that prevented that matter from commencing as scheduled.

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).)

The parties established good cause for a continuance and the request is granted. All hearing dates are vacated. The matter will be reset as follows:

Prehearing Conference:	March 18, 2019, at 10:00 a.m.[1]
Due Process Hearing:	March 26, 27, and 28, 2019, and continuing as needed at the discretion of the Administrative Law Judge. Unless otherwise ordered, the hearing will commence at 9:30 a.m. on the first day and at 9:00 a.m. on all other days.

2. Notice to Witnesses. 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 was not properly notified of the hearing date or properly subpoenaed, as applicable.

3. 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 PHC and hearing dates. Dates for the PHC and hearing will not be cancelled unless Student withdraws his case or otherwise requests dismissal, or unless otherwise ordered.

IT IS SO ORDERED.

DATE: February 4, 2019

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Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings

[1] All motions must be filed three business days prior to the prehearing conference, or parties must establish good cause established as to why the motion was not timely filed.