BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017100459
v.	ORDER GRANTING REQUEST FOR CONTINUANCE, SETTING PREHEARING CONFERENCE AND HEARING
UPLAND UNIFIED SCHOOL DISTRICT.	

On October 31, 2017, Upland Unified School District filed a first request to continue the prehearing conference and hearing in this matter with the Office of Administrative Hearings, based upon the unavailability of counsel. On October 31, 2017, Student opposed the request.

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).)

Student filed this matter on October 5, 2017, for hearing only. On October 11, 2017, OAH issued the scheduling order, setting the prehearing conference for November 3, 2017, and the hearing for November 15, 2017. On October 26, 2017, OAH granted District's motion to dismiss issues in Student's Complaint that predated Student's July 11, 2017 settlement agreement. This agreement resulted in the dismissal of Student's prior due process request (OAH no. 2017031306). Therefore, the remaining issues in Student's complaint relate to a September 19, 2017, individualized education program team meeting.

District seeks a continuance because of the unavailability of District's attorney, Jonathan P. Read. In his sworn declaration, Mr. Read states that he purchased nonrefundable air tickets for travel outside the United States from November 15 through 23, 2017. Mr.

Read has represented District regarding claims related to Student, including the prior due process matter that was filed in March 2017. He negotiated the settlement agreement with Parent on the first day of hearing in the prior due process and has reviewed evidence, interviewed witnesses, and participated in advising District regarding Student's various claims. District asserts that it would be prejudiced if forced to proceed with another attorney, who would be required to duplicate Mr. Read's efforts and, likely, would not have sufficient time to fully familiarize himself or herself with the case before hearing.

Upon Mr. Read's return, he is scheduled for a due process hearing from November 28 through December 6, 2017 and a hearing from December 15 through 14, 2017. District is closed for Winter Break from December 22, 2017, through January 5, 2018. These due process matters were filed before Student's case herein. Mr. Read has attempted to discuss his request for a continuance with Parent, including writing an October 26, 2017 email. However, Parent did not respond.

Parent opposes the continuance, claiming that: this matter is actually a continuance of the prior due process matter (OAH no. 2017031306) from March 2017; Student already submitted a prehearing conference statement and requested subpoenas; another attorney from Mr. Read's firm could do the hearing; and, Student has been without occupational and vision therapy services since March 22, 2015. Parent did not provide any proposed alternative dates, should the motion be granted.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Here, District has demonstrated good cause for a continuance. Mr. Read has been substantially involved in advising his client regarding Student's various claims and District would be prejudiced if forced to proceed to hearing with another attorney. This matter was filed four weeks ago, has never been continued, and only concerns issues related to the September 2017 IEP. Parent's assertions that this complaint addresses issues that relate back to March 2015, and is a continuance of the Student's prior complaint, are without merit

All dates are vacated. This matter is set as follows:

Prehearing Conference: **January 5, 2018, at 1:00 PM**

NOTE: District's pending motion to change venue will be addressed at the January 5, 2018 prehearing conference. The parties have filed PHC statements, witness and exhibit lists. The parties may, but are not required to, file PHC statements, witness and exhibit lists before the PHC on January 5, 2018.

Due Process Hearing: **January 10 and 11, 2018, at 9:30 AM the first day, and 9:00 AM each hearing day thereafter,** continuing day to day, Monday through Thursday,

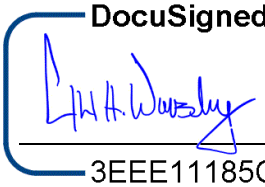
as needed at the discretion of the Administrative Law Judge

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.

IT IS SO ORDERED.

DATE: November 01, 2017

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings