BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017070535 ORDER GRANTING REQUEST FOR CONTINUANCE OF HEARING

On November 6, 2017, District filed with the Office of Administrative Hearings a request to continue the hearing for one week based upon unavailability of counsel. On November 6, 2017, Student opposed the request on the grounds Student's counsel was unavailable through January 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).) 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. Good cause exists for the continuance based upon a serious accident resulting in the unavailability of counsel for District, Mary Kellogg. Ms. Kellogg prepared for, attended, and argued the hearing on the bifurcated issue of residency, which was held on October 24 and 25, 2017. An order issued on the bifurcated hearing on October 31, 2017. Ms. Kellogg's accident occurred on November 3, 2017, leaving insufficient time for another attorney to prepare for the hearing on remaining issues, set for November 6 through 9, 2017. District seeks a one week continuance to November 13, 2017.

Student opposed the continuance request. Ms. Weissburg, Student's counsel, submitted a declaration citing unavailability through January 2018 due to two back to back trials currently on her calendar beginning November 14, 2017, and an additional trial in early January 2018. However, the declaration does not identify the case name, number, filing dates, trial dates, or in which agency or court the cases are pending.

Good cause having been shown, the request for continuance is:

☒ Granted, without prejudice. The parties may bring a joint request for continuance specifying mutually agreeable dates and times for hearing. Any such joint request must be filed no later than 12:00 p.m., on Friday, November 10, 2017.

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

Due Process Hearing:	November 13, 2017 at 1:30 p.m., and November 14, 15, and 16, 2017 at 9:00 a.m., and 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 6, 2017

DocuSigned by:

COLE DALTON
Administrative Law Judge
Office of Administrative Hearings