BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STUDENT, v. BENICIA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016041016 ORDER GRANTING REQUEST TO VACATE HEARING DATE

This matter is set for hearing on February 14, February 15, and February 16, 2017. On December 21, 2016, Student requested to vacate the hearing date on February 16, 2017, because his counsel is set to appear in a matter pending in state court on that day. Benicia Unified School District did not file a response to Student's 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).)

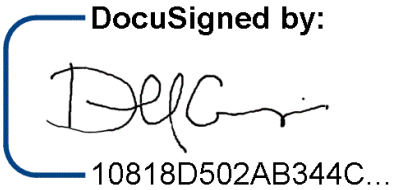
OAH reviewed the request for good cause and considered all relevant facts and circumstances. Student has established good cause to vacate the February 16, 2017 hearing date. The request is granted. The hearing will begin on February 14, 2017, and continue day to day, Monday through Thursday, as needed, at the discretion of the Administrative Law Judge, with the exception of February 16, 2017.

The parties shall notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure 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 day or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: December 28, 2016



DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings