BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015120810 ORDER DENYING REQUEST FOR CONTINUANCE

On January 11, 2016, Oakland Unified School District filed a request to continue the dates in this matter, based upon unavailability of counsel. Counsel also states she is unavailable for hearing beginning January 26, 2016, because she is scheduled to be in hearing in Office of Administrative Hearings case no. 2015100293 which is an earlier filed matter. That case is scheduled for January 20, 21 and 25, 2016, and, if not completed within the days already scheduled, will continue day to day, Monday through Thursday. Counsel further alleges that even if the other matter concludes on January 25, 2016, she will have insufficient time to prepare for and participate in two hearings in such a short time period.

On January12, 2016, Student filed an opposition to the motion to dismiss because a continuance would be frustrate the purpose of the order issued on December 31, 2015 which advanced the dates in this matter; that Oakland's attorney was aware of her scheduling conflicts earlier; and, that the unavailability of Oakland's counsel because she has another hearing scheduled is not good cause.

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. The request is:

☒ Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. **The mediation date of January 19, 2016 is also confirmed**. In this case, counsel for Oakland has not shown that she is not available for hearing on January 26, 2016. That matter is currently set for three days and, if it does not conclude, any additional days ordered in that case will be subject to this order.

OAH is generally inclined to grant first requests for continuances. However, in this case, there was an order specifically moving the hearing dates forward, pursuant to 34 C.F.R. § 300.510(c)(1).) Allowing a continuance at this point, in this matter, under these circumstances, and for the reasons requested by Oakland, would frustrate the purpose of advancing the hearing dates.

IT IS SO ORDERED.

DATE: January 13, 2016

/S/
MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings