BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017050096
v.	ORDER DENYING MOTHER'S REQUEST FOR CONTINUANCE; ORDER FOR PARTIES TO PETITION FAMILY COURT AS EDUCATIONAL DECISION MAKING AUTHORITY
LOS ALAMITOS UNIFIED SCHOOL DISTRICT.	

On May 31, 2017, Father filed a request to continue the initially set dates in this matter with the Office of Administrative Hearings, based upon his unavailability due to previously scheduled legal matters. Neither Mother nor Los Alamitos Unified School District filed a response. OAH granted Father's continuance on June 6, 2017, and set this matter for hearing to commence on August 15, 2017.

On June 7, 2017, the attorney for Mother filed an objection to OAH continuing the hearing, claiming that Father is not a party to this action and had no standing to participate in this matter unless joined to this action by OAH.[1] Mother's motion indicted her attorney is not available on the dates set by OAH, and is therefore is being treated as a continuance request. Neither Father nor Los Alamitos Unified School District filed a response to Mother's motion.

APPLICABLE LAW

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,

[1] Father did file with OAH on June 9, 2017, a request to be joined as party. Father's response will be ruled upon after Mother and Los Alamitos Unified School District have had the opportunity to file a response.

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).)

DISCUSSION

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Mother's continuance request is denied without prejudice and all hearing dates and timelines shall proceed as calendared. While Mother's counsel states that she is not available on the dates in OAH's June 6, 2017 order, Mother's continuance request does not propose new dates. If Mother wishes to file another continuance request, the request shall include proposed dates after an attempt to meet and confer with District and Father as to agreeable dates for hearing.

As to Mother's contention that Father cannot participate in this matter, according to the filings in this matter by Father and Mother, they have joint legal and physical custody of Student. The child custody agreement provided by Mother only states that Father will not interfere in Mother's attempt to see if Student qualified for special education and related services, and if Student was found eligible that Parents would cooperate in implementing Student's individualized educational program. As Parents' child custody agreement provides for joint legal custody, and the custody agreement only requires that Parents cooperate in implementing Student's IEP, either Parent has the right to participate in any special education hearing request either Parent files. (34 C.F.R. § 300. (b)(1) & (2); Ed. Code, § 56028(b)(1) & (2).)

As Mother and Father have a long documented acrimony towards each other as established in appellate court decisions regarding their divorce, and based on the present filings in this matter, OAH has significant doubts that the parties will cooperate in this matter. Indeed, nothing prevents one parent from entering into a settlement agreement with District without informing the other parent. (*Student v. Modesto City Schools* (May 17, 2007) Cal.Offc.Admin.Hrgs. 2007030782.) In fact as alleged by Mother, Father exited Student from special education after District found her eligible, which Mother contends is a denial of Student's right to a free and appropriate education by District. Therefore, because Parents' conflicting ability to exercise educational rights could lead to educational and legal gridlock, Parents are ordered to petition the family court that has jurisdiction over Parents' custody of Student as to which Parent, if any, has final decision making authority as to this special education proceeding. (*Student v. Capistrano Unified School District* (November 9, 1999) SEHO No. 802-99.) In lieu of filing a court petition, Parents may submit a joint stipulation as to each Parent's role in this matter, their respective authority and promise of cooperation.

ORDER

1. Mother's continuance request is denied without prejudice. This matter shall proceed as scheduled.

2. Mother's request that Father not participate in this matter is denied as both Parents possess Student's educational rights.

3. Within 30 days of this order, Mother and Father shall petition the family court that has jurisdiction over their custody of Student as to which Parent has educational decision making authority in this matter, or how Parents are to proceed in this matter to ensure their cooperation and attach a copy of this order with their petition. Parties need not file a copy of the petition with OAH as they only need to submit a declaration under penalty of perjury of their filing. In lieu of filing a court petition, Parents may submit a joint stipulation as to each Parent's role in this matter, their respective authority and promise of cooperation.

DATE: June 13, 2017

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings