BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: BARSTOW UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017040083 ORDER VACATING ORDER TO SHOW CAUSE; GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On May 17, 2017, OAH issued an Order to Show Cause Why the Case Should Not be Dismissed because District failed to appear at a prehearing conference set on May 15, 2017. District timely filed a response to the Order to Show Cause and a request to continue the due process hearing.

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).)

District's counsel submitted a declaration taking full responsibility for failing to appear at the PHC due to a mistake she made on her calendar. She contacted Student and the parties agreed to continue the due process hearing to agreed dates less than 90 days from the initial date set.

OAH has reviewed the response to the Order to Show Cause and the request for continuance for good cause and considered all relevant facts and circumstances. The Order

to Show Cause is vacated. The request for continuance is granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference:	June 5, 2017 at 3:00 p.m.
Due Process Hearing:	June 14 and 15, 2017 and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall begin at 9:30 a.m. on the first day and at 9:00 a.m. on all other days unless otherwise ordered.

District represents that the parties would like OAH to schedule a mediation in June. On April 24, 2017, OAH issued a scheduling order which set mediation for May 9, 2017. District cancelled the mediation on May 4, 2017. The parties may file a request for mediation provided they have agreed on a date and OAH is able to accommodate the date requested.

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: May 22, 2017

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Marian H. Tully
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MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings