BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016080137
v.	ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND HEARING DATES
SAN JOSE UNIFIED SCHOOL DISTRICT.	

On October 12, 2016, San Jose Unified School District filed with the Office of Administrative Hearings a request to continue the dates in this matter based upon the unavailability of its counsel. Currently, counsel for San Jose is in hearing in OAH Case Number 2016061098, and the hearing dates in that matter conflict with the hearing dates in this matter. On October 13, 2016, Student filed an opposition to the continuance citing the financial burden of privately funding educational programming for Student and the adverse impact a further continuance would have on Student's mental health as reasons to deny the request. On October 14, 2016, San Jose's counsel filed a supplemental declaration as to her unavailability for hearing on specified dates in November due to other OAH matters. This is the second request for a continuance.

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. San Jose has established good cause for a brief continuance due to the unavailability of counsel. The request is:

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

Prehearing Conference:	November 7, 2016, at 1:00 p.m.
Due Process Hearing:	November 15, 2016, at 9:30 a.m., November 16-17, 2016, 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: October 14, 2016

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings