BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013051091 ORDER GRANTING IN PART AND DENYING IN PART FIRST REQUEST FOR CONTINUANCE AND SETTING MEDIATION, PREHEARING CONFERENCE AND DUE PROCESS HEARING

On May 24, 2013, Student filed a request for due process hearing (complaint) alleging that District failed to provide an offer of an appropriate placement for the 2011-2012, 2012-2013, and 2013-2014 school years, inclusive of the extended school years (ESY). The due process hearing was set for July 17, 2013. On June 17, 2013, the parties filed their first stipulated request for continuance of the due process hearing, agreeing to mediate on August 28, 2013, and participate in a prehearing conference on October 7, 2013, and a hearing on October 28, through October 30, 2013. OAH granted their first stipulated request for continuance and issued a scheduling order.

On September 20, 2013, the parties filed a second joint request to continue dates in this matter based, in part, on the inadvertence of Student's counsel to communicate to his clients and reach an understanding about their availability for hearing set forth in the parties's first stipulation of June 17, 2013. In their second joint continuance request, the parties requested the following schedule: an October 15, 2013, mediation; a December 30, 2013, prehearing conference; and a January 7, through 9, 2014, due process hearing. According to Student's declarations supporting the second continuance request, Student's father (Father) was invited in March 2013, two months prior to filing the complaint, to be a visiting scholar at a university in Scotland, sometime during the 2013-2014 school year. Despite knowing Father's availability was uncertain, the parties agreed to continue the matter several months without alerting OAH about the Father's uncertain availability. Father now states that he will not be available on the dates currently scheduled for hearing, October 28, 2013, through 30, 2013. The parties did not mediate on the stipulated mediation date of August 28, 2013, and would also like an opportunity to mediate on a date they assure OAH they are now available, but which conflicts with their stipulated hearing dates.

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 second stipulated continuance request for good cause and considered all relevant facts and circumstances. Good cause exists to provide some accommodation to Father so that he can participate in the mediation and due process hearing, and to provide the parties an additional opportunity to mediate. However, good cause does not exist for a continuance of the due process hearing to 2014. The request is:

☒ Granted in part and denied in part. All dates are vacated. Further continuances are not contemplated for witness availability or settlement, as the parties have

had more than ample time to explore settlement, and to ensure that witnesses, including Father, are availability to testify in person or by telephone.

This matter will be set as follows:

Mediation:	October 15, 2013, 9:30 a.m.
Prehearing Conference:	November 8, 2013, 1 p.m.
Due Process Hearing:	November 19, 20, and 21, 2013, p.m. at 9:30 a.m. and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

Dated: September 24, 2013

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings