BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016060728
v.	ORDER VACATING ORDER TO SHOW CAUSE AND CONTINUING DUE PROCESS HEARING
LOS ANGELES UNIFIED SCHOOL DISTRICT.	

On June 9, 2016, Parent, on Student's behalf, filed a request for due process hearing. (complaint). Student was 17 years of age at the time the complaint was filed and would turn 18 years of age on September 9, 2016. Parent represented Student at the due process hearing on September 6 and 7, 2016. On September 8, 2016, the day before Student's eighteenth birthday, the parties agreed, in the interests of justice, to continue the hearing to allow Parent time to obtain letters of conservatorship. On September 8, 2017, OAH issued an order continuing the due process hearing to February 7 and 8, 2017.

On January 27, 2017, Parent filed a request for continuance on the grounds she was still waiting to obtain conservatorship. Parent provided no evidence, however, that any conservatorship proceedings had actually been instituted. On February 3, 2017, OAH issued an order denying Parent's request for a continuance because there was no evidence that a request for conservatorship had been made, nor any evidence of the status of the request.

The third day of the due process hearing began on February 7, 2017. Parent and Student attended. Parent did not have the right to represent Student and Student lacked the capacity to represent himself or assign his rights to Parent. For the reasons stated on the record at the hearing, OAH issued an order to show cause on or before 1:30 p.m. on March 20, 2017, why this matter should not be dismissed on the grounds Parent did not demonstrate she had authority to represent Student. By written order dated February 13, 2017, Parent was to provide proof to District and to OAH that she has been appointed as Student's conservator, or provide proof that a conservatorship request was actually filed and the date set for the proceedings. OAH ordered the parties to appear 1:30 p.m. on March 20, 2017 to set dates to continue the hearing in the event Parent proved the matter should not be dismissed.

On March 20, 2017, at the hearing in the Order to Show Cause, Parent and Student appeared. Attorney Patrick J. Balucan, appeared on behalf of District. Parent produced evidence that a Petition for Appointment of Limited Conservatorship was filed with the Los Angeles Superior Court on January 25, 2017. The Superior Court hearing on the Petition is scheduled for March 22, 2017. T Superior Court appointed counsel to act for Student at the

March 22, 2017 hearing. Accordingly, Parent met the requirements of the order to show 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).)

At the parties' request, the due process hearing is continued for approximately 30 days to allow time for the conservatorship proceedings to resolve.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is granted. The due process hearing is continued to May 2, 3 and 4, 2017 and continuing day to day as necessary at the discretion of the Administrative Law Judge. The hearing shall start at 9:30 on the first day and at 9:00 all other days unless otherwise ordered.

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: March 20, 2017

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