BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. DEHESA ELEMENTARY SCHOOL DISTRICT,	OAH Case No. 2016030188
DEHESA ELEMENTARY SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2016030188 ORDER GRANTING THIRD REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND HEARING

On July 13, 2016, the parties filed a joint request to continue the dates in this consolidated matter with the Office of Administrative Hearings. Student's complaint in this consolidated matter was filed on February 29, 2016. It was first continued on April 21, 2016, to hearing dates in June. District filed its complaint on April 26, 2016. At a prehearing conference on May 16, 2016, the cases were consolidated pursuant to District's motion, and the June hearing dates confirmed. On June 6, 2016, another prehearing conference was held at which the parties indicated they might be seeking a further continuance. On June 7, 2016, the parties filed a joint request for a second continuance of the hearing to the currently scheduled dates of September 26-29, which was granted on June 7, 2016.

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. The request is:

☒ Granted. All dates are vacated. This third continuance request is supported by a declaration under penalty of perjury attesting to a medical appointment for Student with an out-of-state specialist on September 26-28, which dates conflict with the current hearing dates of September 26-29. The conflicting doctor's appointment was apparently made on June 6, 2016, prior to the June 7, 2016 request for the current dates, and no explanation is given for why an appointment made on June 6, 2016 was not known on June 7, 2016, when the second continuance was sought and these hearing dates requested. Nor is there any explanation for why the parties waited more than a month to bring the conflicting dates to OAH's attention. Nevertheless, the dates requested for hearing are within two weeks shortly after the currently scheduled dates; the reason is stated in a declaration under penalty of perjury; and it appears legitimate. Therefore the continuance is granted. Given the length of time this matter has been pending however, no further continuances are contemplated.

This matter will be set as follows:

Prehearing Conference:	October 3, 2016, at 1:00PM
Due Process Hearing:	October 11-13 at 9:30 AM first day, 9:00 AM each additional day, 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: July 13, 2016

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June Lehrman
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JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings