BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017040249
v.	ORDER GRANTING EMERGENCY REQUEST FOR CONTINUANCE OF HEARING
BENICIA UNIFIED SCHOOL DISTRICT.	

On the evening of October 23, 2017, the assistant to Counsel for Benicia Unified School District left a message on OAH voice mail that Counsel needed to request a one-day continuance of the hearing scheduled to begin October 24, 2017. Counsel's assistant stated that Counsel's mother had a serious medical emergency and counsel was needed to assist her. Counsel's assistant telephoned the OAH case manager before 8:00 a.m. on October 24, 2017 to confirm that OAH had received the message. Due to the emergency nature of the requested continuance, an immediate decision for the hearing to go dark for the day was made without input from Student's counsel.

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 always includes illness or other excusable circumstances, (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 and 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).)

In this case the need to for the continuance was unavoidable and unforeseen. Therefore, good cause having been demonstrated, the continuance is GRANTED. At this point, the case is scheduled to proceed on Wednesday, October 25, 2017 at 9:30 a.m. continuing from day to day thereafter at the discretion of the Administrative Law Judge, absent another motion demonstrating need for an additional continuance of the case due to this medical emergency.

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 24, 2017



MARGARET GIBSON
Presiding Administrative Law Judge
Office of Administrative Hearings