BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SAN MARCOS UNIFIED SCHOOL DISTRICT,	OAH Case No. 2018101112
SAN MARCOS UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019020520 ORDER CONTINUING DUE PROCESS HEARING

On March 25, 2019, a telephonic status conference was held before Administrative Law Judge Alexa J. Hohensee, Office of Administrative Hearings. Cindy Lane, Attorney at Law, appeared on behalf of Student. Tiffany M. Santos and Sarah E. Orloff, Attorneys at Law, appeared on behalf of San Marcos Unified School District. The status conference was recorded.

During the telephone conference, San Marcos requested a continuance of two days due to the unavailability of its representative, which was opposed by Student on the grounds it would unreasonably delay the hearing. 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).)

Here, District's representative, Ms. Dully, is unavailable on April 2, 2019, as she will be out of town at the beginning of San Marcos' Spring break. Ms. Dully returns the afternoon of April 3, 2019, and is available on April 4, 2019, as are Dr. Reed, Parent and counsel for both parties. Student opposed on the ground that San Marcos did not raise the unavailability of a district representative at the time Dr. Reed was scheduled to testify on April 2, 2019. However, San Marcos did raise a concern on March 20, 2019, about District representative availability during Spring break, but as counsel was unable to contact Dr. Reed at that time, a status conference was scheduled specifically to finalize the availability of Dr. Reed and San Marcos' representative. Student also opposed the continuance as causing an unreasonable delay, but as the parties had previously agreed to a continuance to April 3, 2019 for the filing of closing briefs, this continuance results in a very short continuance of one day. Accordingly, for good cause shown, the due process hearing is continued to 9:30 a.m. on April 4, 2019. Dr. Reed is ordered to appear and testify at 9:30 a.m. at San Marcos' offices at 255 Pico Avenue, San Marcos, California.

Counsel for San Marcos represented at hearing on March 20, 2019, that Dr. Reed was called as a witness to authenticate and testify regarding documents late produced in response to San Marcos' subpoena duces tecum. Any objections by Student to a line of questioning or admission of documents into evidence shall be made and ruled upon at the hearing on April 4, 2019. The ALJ will also rule on Student's request to recall Parent as a witness to rebut the testimony of Dr. Reed, and on District's oral motion during the status conference to admit Exhibits Nos. D-18, D-96 and S-8 into evidence, on April 4, 2019.

The due date for written closing briefs to be efiled with OAH is extended to 5:00 p.m. on April 4, 2019. The parties may request additional time for supplemental briefing addressing Dr. Reed's testimony at the hearing.

IT IS SO ORDERED.

DATE: March 25, 2019

DocuSigned by:
Alexa Hohensee
A7D463FF094544B...
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings