

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013071106

NOTICE CONCERNING AGREEMENT
TO USE MEDIATION IN LIEU OF
RESOLUTION SESSION

Student filed this complaint with the Office of Administrative Hearings (OAH) on July 23, 2013. Mediation is scheduled on August 27, 2013, a prehearing conference is scheduled on September 9, 2013, and a hearing is scheduled to begin on September 17, 2013.

On August 9, 2013, the Mt. Diablo Unified School District (District) submitted a document signed only by District's representative, but asserting that both parties agreed, expressly stating that they wished to advance mediation into the 30-day resolution session period. On August 7, 2013, Parent, on behalf of Student, filed a request to hold mediation during the resolution session period. Therefore, although they did not file one documents signed jointly, the documentation filed with OAH confirms that both parties desire proceeding to mediation in lieu of the resolution session. The parties did not request to move forward any of the prehearing conference or due process hearing dates.

APPLICABLE LAW AND DISCUSSION

A school district must convene a meeting to discuss the issues raised in a due process complaint in order to attempt to resolve the dispute. (34 C.F.R. § 300.510 (a)(1), (2); Ed. Code, § 56501.5, subd. (a).) This meeting is commonly known as a resolution session. A resolution session need not be held if the parent and school district agree in writing to waive it (*Id.* at § 300.510 (a)(3)(i); § 56501.5, subd. (b)) or if the parent and school district agree to use mediation instead of a resolution session (*Id.* at § 300.510 (a)(3)(ii); § 45401.5, subd. (b)). If the parties agree to waive the resolution session, the 45-day timeline for a due process hearing begins the day after the waiver. (*Id.* at § 300.510(c)(1); 56501.5, subd. (d)(1).) However, the timeline does not automatically begin if the parties agree to use mediation instead of a resolution session. (*Id.* at § 300.510(c); also see 56501.5, subd. (d).)

When the parties agree in writing to waive a resolution session, OAH will move forward the dates for mediation, prehearing conference, and hearing to accommodate the

beginning of the 45-day timeline for hearing. However, in this case, the documents indicate the parties' desire to move the mediation forward to within the 30-day resolution period. The parties did not express a desire to advance the hearing timeline, which indicates their intent to use mediation in lieu of a resolution session.

Accordingly, this document is being treated as an agreement to use mediation instead of a resolution session, under 34 Code of Federal Regulations part 300.510(a)(3)(ii), and not a waiver of the resolution session under part 300.510(a)(3)(i) and (c)(1). As a result, the timeline governing this matter shall not change.

The request to move the mediation forward into the 30-day resolution period is granted. Mediation shall convene on August 21, 2013, at 9:30 a.m. All other dates remain as calendared.

Dated: August 12, 2013

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings