

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DEL MAR UNION SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013080940

ORDER GRANTING REQUEST FOR
CONTINUANCE OF PREHEARING
CONFERENCE, CONTINUING DUE
PROCESS HEARING, REQUIRING
FILING OF PREHEARING
CONFERENCE STATEMENTS

The prehearing conference (PHC) in this matter is set for February 21, 2014. The parties are required to file PHC statements at least three business days prior to the PHC. On February 19, 2014, the parties filed a notice of stipulation to delay filing of the PHC statements until close of business on February 20, 2014. The parties are represented by attorneys who have practiced before the Office of Administrative Hearings (OAH) for sufficient time that they are aware of OAH's policies and calendaring guidelines. Parties may inform OAH of a delayed filing of PHC statements due to settlement negotiations, so long as that notice comes at or before the time that PHC statements are due. Here, the parties have failed to comply with that calendaring policy.

On February 20, 2014, the parties filed a joint request to continue the PHC in this matter to February 28, 2014, on the grounds that they are close to reaching a settlement. While this may be good cause to continue the PHC, the parties have failed to consider the impact of such a continuance on the currently scheduled hearing date of March 3, 2014, should their attempted settlement fall by the wayside. Accordingly, as set forth below, while the request is granted, OAH hereby vacates the March 3, 2014 hearing date and the due process hearing in this matter shall commence on March 4, 2014.

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. **The parties are ordered to file PHC statements by 5:00 p.m. on February 25, 2014, regardless of whether they are close to settlement. If the parties have a final settlement agreement, they may submit a copy of the signature page in lieu of PHC statements.**

ORDER

1. The request to continue the PHC is granted. The PHC in this matter shall be held on February 28, 2014, at 1:00 p.m.

2. The due process hearing date of March 3, 2014, is vacated. The hearing in this matter shall commence on March 4, 2014, at 9:30 a.m., and continue day to day, Monday through Thursday, at the discretion of the presiding Administrative Law Judge.

3. The parties are ordered to file either a PHC statement or a copy of the signature page of the settlement by 5:00 p.m. on February 25, 2014.

DATE: February 20, 2014

/s/

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