

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BURLINGAME ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2012041009

ORDER DENYING REQUEST TO
VACATE DATES

On May 25, 2012, Student filed a notice of pending settlement and request to vacate dates in this matter. The matter is currently set for a prehearing conference on June 13, 2012, and a due process hearing on June 19, 2012. The parties have reached a settlement, however the parties have yet to execute a settlement agreement and submit a copy of the signature page to the Office of Administrative Hearings (OAH).

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:

Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. OAH does not vacate dates and set status conferences unless

parties have a signed settlement agreement. While a notice of pending settlement may be grounds for a short continuance, this matter is set for a prehearing conference on June 13, 2012, and a hearing on June 19, 2012. Therefore, sufficient time exists for the parties to submit a copy of the signature page and request a status conference. Accordingly, the request to vacate dates and set a status conference is denied without prejudice.

IT IS SO ORDERED.

Dated: May 25, 2012

/s/

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