

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. DEL MAR UNION SCHOOL DISTRICT,	OAH CASE NO. 2014020555
DEL MAR UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013110851 ORDER GRANTING IN PART REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On February 21, 2014, the parties filed a request to continue the dates in this matter. As discussed below the request is granted in part and denied in part.

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).) The Office of Administrative Hearings (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 in part.

Mediation

A school district, or local education agency, 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).) 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)) or if the parent and school district agree to use mediation instead of a resolution session (*Id.* at § 300.510 (a)(3)(ii)).

Student's case was filed on February 13, 2014. The 30-day resolution period in Student's case will not conclude until March 15, 2014. The parties have requested mediation be calendared for February 27, 2014, which falls within the 30-day resolution session time period. The parties have failed to provide OAH with a written agreement of their intent to use mediation in lieu of resolution session. Accordingly, the parties' request to advance mediation to February 27, 2014, is denied.

Prehearing Conference and Due Process

The parties have requested that the prehearing conference in this matter be held on April 7, 2014, at 10:00 a.m. OAH does not calendar any events during the morning of the first Monday of each month. Accordingly, the parties' request for continuance is granted in part and this matter will be set as follows:

Mediation:	March 20, 2014, at 9:30 AM
Prehearing Conference:	April 7, 2014, at 1:00 PM
Due Process Hearing:	April 15 – 17, 2014, starting at 9:30 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DATE: February 21, 2014

/s/

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