BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TWIN RIVERS UNIFIED SCHOOL DISTRICT AND MARYSVILLE JOINT UNION SCHOOL DISTRICT.	OAH CASE NO. 2013060425 NOTICE OF WAIVER OF RESOLUTION SESSION AND ORDER GRANTING REQUEST FOR CONTINUANCE, SETTING DATE FOR MEDIATION AND CONFIRMING DATES FOR PREHEARING CONFERENCE AND DUE PROCESS HEARING

Student filed this complaint with the Office of Administrative Hearings (OAH) on June 5, 2013, naming Twin Rivers Unified School District and Marysville Joint Union School District. On June 18, 2013, the parties submitted a letter dated June 18, 2013, indicating that they jointly waived the resolution session in this matter. On June 19, 2013, OAH issued an order finding that the parties waived the resolution session. On the same day, OAH issued and served a scheduling order based on the waiver of the resolution session. Later on June 19, 2013, OAH issued an order granting Student's motion to amend the complaint that reset the statutory timelines as required bylaw. OAH served this order on the parties on June 21, 2013. On June 25, 2013, OAH issued and served a scheduling order based on the order amending the complaint, which scheduled mediation on July 24, 2013, a prehearing conference on August 5, 2013, and the hearing beginning on August 13, 2013.

On June 25, 2013, the parties jointly requested a continuance advancing the mediation to July 18, 2013, and continuing the prehearing conference to August 19, 2013, and the hearing to August 26 to 29, 2013. On June 26, 2013, OAH issued an order denying the parties' request to move the mediation to July 18, 2013, because the requested date was within the 30-day resolution period required by law for the amended complaint, and granting the request to continue the prehearing conference and hearing dates. The currently scheduled dates in this matter are the mediation is scheduled for July 24, 2013, the prehearing conference is August 19, 2013, and the hearing is August 26 to 29, 2013, and continuing as ordered by the Administrative Law Judge.

On June 27, 2013, the parties submitted a letter stating that they "agree to waive the resolution session and proceed to mediation on July 18, 2013." The letter was signed by all three parties on that date.

APPLICABLE LAW

Waiver of Resolution Session: 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).)

Continuance of Due Process 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. 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).)

DISCUSSION

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.

In this case, on June 27, 2013,the parties submitted a waiver of the resolution session concerning the amended complaint, signed by all parties. Accordingly, the 45-day timeline for a due process hearing on the amended complaint begins the day after the waiver, June 28, 2013. Based on this, the 45-day deadline for the issuance of the decision is August 12, 2013. As a result, OAH would ordinarily issue a new scheduling order as follows: mediation on July 11, 2013, prehearing conference on July 19, 2013, and hearing beginning on July 23, 2013.

The parties requested that the mediation be scheduled on July 18, 2013. The parties did not request that any of the other dates in the June 26, 2013 scheduling order be changed,

namely, the prehearing conference on August 19, 2013, and the hearing on August 26 to 29, 2013. Since the parties did not request that any of the other dates be moved forward to accommodate the legally mandated resulting from the waiver of the resolution session for the amended complaint, the parties have in effect requested a continuance so that the prehearing conference and due process hearing remain as scheduled in the June 26, 2013 scheduling order.

Good cause is found for the requested continuance, and the parties' request is granted. The matter is scheduled as follows:

Mediation:	July 18, 2013, at 9:30 a.m.
Prehearing Conference:	August 19, 2013, at 10:00 a.m.
Due Process Hearing:	August 26 to 29, 2013, beginning at 1:30 p.m. on August 26, 2013, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

Dated: July 8, 2013

/s/

JUDITH A. KOPEC
Division Presiding Administrative Law Judge
Office of Administrative Hearings