

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. 2012070884

ORDER CONTINUING PREHEARING  
CONFERENCE

This matter is set for a prehearing conference (PHC) on February 13, 2013, and for a due process hearing to begin on February 19, 2013. On February 13, 2013, Susan Foley, attorney for Student, filed a notice of settlement indicating that the parties had executed a final settlement agreement, subject to approval by the Board of Trustees for the Burlingame Elementary School District (Board). Student therefore requested all dates be vacated and a status conference set following the Board's meeting in March 2013. However, Student was unable to provide a signature page to the settlement agreement with Parent's signature, due to technical difficulties. Student also filed a request to dismiss on February 13, 2013, using the Office of Administrative Hearings (OAH) form.<sup>1</sup> Because Student's notice of settlement pending Board approval, and request for a status conference, was filed after the request to dismiss, OAH assumes that Student is requesting that OAH retain jurisdiction over this matter until the Board has approved the settlement and Student did not intend to dismiss the case outright. If the Burlingame Elementary School District disagrees with such an interpretation, it may file a motion to dismiss this action.

Because Student has not provided OAH with a copy of Parent's signature to the settlement agreement, OAH cannot vacate dates and set a status conference. However, Student's request is treated as a request to continue. As set forth below, the request is granted as to the PHC only.

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

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<sup>1</sup> Student's request to dismiss and notice of settlement were both filed after 5:00 p.m. on February 12, 2013, and are accordingly deemed filed on February 13, 2013. The request to dismiss preceded the notice of settlement.

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 PHC set for February 13, 2013, is vacated. This matter will be set as follows:

|                        |                                                                  |
|------------------------|------------------------------------------------------------------|
| Prehearing Conference: | February 15, 2013, at 10:00 AM                                   |
| Due Process Hearing:   | Remain as calendared, beginning on February 19, 2013, at 1:30 PM |

IT IS SO ORDERED.

Dated: February 13, 2013

/s/

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