BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. FRESNO UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2012100242
FRESNO UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2012100291 ORDER GRANTING REQUEST FOR CONTINUANCE AND SETTING DUE PROCESS HEARING

On June 17, 2013, the Fresno Unified School District (District) filed a request to continue the due process hearing in this matter on the grounds that the parties have a related matter pending before the United States District Court, Eastern District of California, wherein a settlement agreement has been reached and may be enforced by the federal court. District filed a supporting declaration from Student's counsel in federal court, and a copy of a status conference order from the federal court. The status conference order establishes that the federal court is considering whether a settlement between the parties should be enforced, sets out the dates for the filing of motions and a hearing, and requests that the Office of Administrative Hearings (OAH) continue this matter to allow the federal court to consider the motions. Should the federal court grant the motion to enforce settlement, it would result in a resolution of the issues currently pending before OAH. Parent, who is unrepresented in federal court, but represents Student's educational rights in the proceedings before OAH, did not file a response to District's request for continuance.

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. All dates are vacated. This matter will be set as follows:

Due Process Hearing:	August 26, 2013, starting at 1:30 PM, through August 29, 2013, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

Dated: June 21, 2013

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