BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CUPERTINO UNION SCHOOL DISTRICT.	OAH CASE NO. 2013080697 ORDER DENYING REQUEST TO ADVANCE DUE PROCESS HEARING DATES

On August 26, 2013, Parent, on behalf of Student, filed a request to advance the dates for mediation and due process hearing in this matter on the grounds that the parties had waived the resolution session. On August 27, 2013, the Cupertino Union School District (District) filed an opposition to Student's request. On August 28, 2013, Student filed a reply to District's opposition.

APPLICABLE LAW AND DISCUSSION

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)). 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).) However, the timeline does not automatically begin if the parties agree to use mediation instead of a resolution session. (*Id.* at § 300.510(c).)

When the parties agree in writing to waive a resolution session, the Office of Administrative Hearings will move forward the dates for mediation, prehearing conference, and hearing to accommodate the beginning of the 45-day timeline for hearing. However, a waiver of the resolution session period and request to advance dates must be in writing and signed by all parties.

Here, Student asserts that both parties waived the resolution session. In support Student has provided an email between the parties on August 23, 2013, wherein Parent requested that resolution session be waived. In response, District's representative noted that resolution session had been waived. Shortly thereafter, District's representative sent another

email to Parent clarifying that District was noting Parent's desire to waive the resolution session, but was not agreeing that it joined in the waiver. Therefore, the evidence does not establish that both parties have indeed waived the resolution session in this matter.

Regardless, even if both parties waive resolution session, they must make an affirmative request to advance the dates in the matter. This requires a written request signed by both parties. Here, only Student has submitted a written request to advance the dates for the mediation and due process hearing. District has neither waived the resolution session, nor signed on to Student's request to advance the dates. Accordingly, Student's request to advance the dates for mediation and due process hearing is denied.

Dated: August 28, 2013

/s/

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