BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: OAKLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013040377 ORDER DENYING REQUEST FOR CONTINUANCE

On August 27, 2013, Student filed a request for continuance on various grounds. Student contends he is entitled to a continuance because he failed to time serve his evidence and witness list upon the Oakland Unified School District (District); the Office of Administrative Hearings (OAH) reassigned this matter for hearing to an Administrative Law Judge (ALJ) other than the one who conducted the prehearing conference;[1] Student's desire to participate in mediation; and, Student's desire to seek legal representation.[2] The continuance request also asserts a right to a continuance based upon a garbled argument concerning witness Clark, from which the undersigned cannot discern what Student claims is good cause for a continuance.[3] Because Student's request for continuance is denied, no response from District is required.[4]

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

[1] Student simultaneously filed a peremptory challenge to the reassignment. That challenge is timely and is being granted under separate order. Therefore, this ground for a continuance will not be addressed further. However, the reassignment of a matter to a different ALJ prior to the commencement of a due process hearing is not in and of itself good cause for a continuance.

[2] Student is being represented by an advocate, Anthony Mason.

[3] The only order in the prehearing conference concerning witness Clark requires District to produce evidence, not Student. Therefore, it is not clear what burden Student is claiming has befallen him such that he would be entitled to a continuance.

[4] There is nothing to indicate that Student served District with the motion.

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:

☒ Denied. All hearing dates are confirmed and shall proceed as calendared. Student was aware of when his evidence and witness list were due to District. Student's failure to meet the time lines is not good cause for a continuance. Furthermore, there is no indication that Student served his evidence and witness list, even if late, upon District. Next, mediation is voluntary and one party's desire to participate in mediation is not good cause, absent the acquiescence of the other party. Should District and Student desire to participate in mediation, they may request one at any time. Finally, with respect to Student's desire to obtain legal representation, this matter was filed on April 8, 2013, and Student has provided no information on what attempts if any he has made to obtain legal representation. Asserting a desire to obtain legal representation on the eve of a hearing, when the matter has been pending for almost five months, with no showing of what efforts have been made, is not good cause for a continuance.

IT IS SO ORDERED.

Dated: August 27, 2013

/s/

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