

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NATOMAS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012050482

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
MEDIATION, PREHEARING
CONFERENCE AND DUE PROCESS
HEARING

On June 15, 2012, the Natomas Unified School District (District) filed a request for continuance of the due process hearing in this matter on the grounds that counsel was unavailable due to a conflicting due process hearing in Office of Administrative Hearings (OAH) Case No. 2012031279. District requested that OAH set the dates, if a continuance was granted. On June 22, 2012, over Student's objection, OAH granted District's request and set the current dates in this matter.

On July 2, 2012, the parties filed a joint request to continue the current dates in this matter. On July 3, 2012, OAH denied the request on the grounds that the parties had failed to establish good cause because they failed to provide any explanation for the requested continuance. OAH further noted that Student's new counsel was assumed to have known of the dates in this matter when representation was accepted.

On July 10, 2012, District filed another motion to continue the dates in this matter. District asserts that key staff and witnesses are unavailable, presumably due to District's summer recess. District further asserts that its legal counsel will be on a previously-arranged vacation during the week of hearing in this matter, thus making counsel unavailable. District's counsel has filed a supporting declaration under oath. On July 10, 2012, Student filed a statement his own motion for continuance and a statement of non-opposition to District's motion.

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).)

As the undersigned has previously ruled, District's unavailability due to summer recess does not constitute good cause for a continuance. However, counsel's unavailability, supported by a sworn declaration under oath, may constitute good cause for a continuance.

While the continuance request is granted, as discussed below, Student's motion to continue bears discussion. Student asserts that he has a constitutional right to representation and his counsel requires at least 30 days to prepare for a hearing. Counsel asserts that OAH would violate Student's constitutional rights if a continuance is not granted. Student has a right to be represented; however, that right does not guarantee that a change in counsel will result in an automatic continuance. Here, Student's counsel undertook this representation knowing the calendared hearing dates. It appears that counsel presumed, perhaps to Student's detriment, that another continuance would be granted. Substitution by counsel who knowingly accepts a matter that counsel is either unavailable for, or cannot prepare for, does not constitute good cause for a continuance. (*Flynn v. Fink* (1923) 60 Ca.App. 670, 673; *Berentz v. Belmont Oil Mining Co.* (1906) 148 Cal. 577, 585.) Denial of such a continuance request does not violate Student's right to representation.

The parties do not clearly request mediation. However, Student's motion states the parties had agreed to hold mediation on August 8, 2012. Accordingly, mediation will be calendared.

Finally, the parties request hearing dates in October 2012. District's motion states that while it is available prior to October 2012, Student's counsel is unavailable. Student's counsel fails to provide any information as to counsel's unavailability. Such a lengthy continuance is not warranted without grounds to support it. Having 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:

Mediation:	August 8, 2012, at 9:30 AM
Prehearing Conference:	September 5, 2012, at 1:30 PM
Due Process Hearing:	September 11, 2012, at 9:30 AM and continuing day-to-day until completed

IT IS SO ORDERED.

Dated: July 10, 2012

/s/

BOB VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings