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. 2013010033
FRESNO UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2012120631 ORDER DENYING REQUEST FOR RECONSIDERATION; GRANTING REQUEST FOR CONTINUANCE; SETTING MEDIATION, PREHEARING CONFERENCE AND DUE PROCESS HEARING; AND SETTING PAGE LIMITS ON FUTURE FILINGS

On March 4, 2013, Parent, on behalf of Student, filed a 100-page long request to continue the dates in this matter.[1] Parent also included a motion to "Separate The Two Unrelated OAH [Office of Administrative Hearings] Cases." OAH did not initially receive a response from the Fresno Unified School District (District) to either of Student's motions.

On March 8, 2013, at approximately 12:30 p.m., OAH staff notified both parties that the request to continue would be granted and an order would follow on March 11, 2013. On March 8, 2013, at approximately 4:44 p.m., District filed an opposition to Student's motions. As discussed below, District's opposition was considered, along with Student's moving papers. The request to separate the consolidated matters is denied and the request to continue is granted.

[1] The significance of the length of the motion is discussed below.

APPLICABLE LAW

Consolidation

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Reconsideration

OAH will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

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).)

DISCUSSION

Request for Reconsideration of Consolidation

Student's request to separate the matters is treated as a request to reconsider the January 22, 2013 consolidation order. OAH consolidates matters based upon factors of commonality of factual allegations, legal issues, a need to prevent inconsistent rulings and conservation of judicial resources. Those were some of the factors considered by Administrative Law Judge (ALJ) Clifford H. Woosley in his January 22, 2013 order granting consolidation.

Here, Student has failed to show any new facts, circumstances or legal authority that would support a reconsideration of the consolidation. While Parent may consider OAH's order consolidating the matters to be "ridiculous," that does not amount to legal authority, new facts or circumstance that would warrant reconsideration. Finally, ALJ Woosley's order is dated January 22, 2013. Student's motion was filed on March 4, 2013. Student fails to provide any explanation as to why his request for reconsideration is filed 40 days after the date of ALJ Woosley's order. Accordingly, the request to reconsider the consolidation of these matter is denied due to a failure to provide any substantive grounds for the reconsideration, and due to the delay in filing the request.

Request for Continuance

Student requests a continuance of this matter due to other litigation between the parties, medical issues within the family and need for further time to prepare for hearing concerning the consolidated matters. District opposed the request asserting that Student had failed to establish good cause. In support of its arguments, District cited to OAH's order of February 15, 2013, in which ALJ Ravandi found same or similar arguments from Student to be unpersuasive.

District's arguments are not without merit. However, a weighing of the equities is required here. District has previously been granted two continuances of its own. While not a determining factor, it is a factor to be considered. Parents have failed to provide specific conflicting dates in their other legal matters and have failed to provide specifics as to the family medical issue. However, as discussed below, OAH is increasingly concerned with the acrimonious nature of these proceedings. For example, while District opposes the continuance it fails to provide an explanation of what specific harm it may suffer from the continuance being granted. District's contention that it is concerned about Student's welfare because he will remain in the Phoenix Secondary Academy (Phoenix), a continuation school, is unpersuasive because, ironically, the placement at Phoenix is the result of expulsion proceedings District took against Student.

After a review of all of the reasons stated by Parents as to why they cannot proceed to hearing as currently scheduled, Student's request to continue is granted. It is granted primarily so that both parties will have a full and final opportunity to prepare for this hearing.

It is also granted so that both parties will have an opportunity to seriously consider the content of this order with respect to their conduct in this matter, and prepare for hearing accordingly.

Student requests that the matter be continued into May 2013. While District filed an opposition, it failed to take the opportunity to address its availability in May 2013. Accordingly, the undersigned assumes that District is available in May 2013. Any future continuance request by the parties shall be looked upon unfavorably because Student is being granted his requested month for hearing and District has chosen to remain silent as to its schedule in May 2013.

Finally, Student requests mediation. Mediation is voluntary and OAH cannot force parties to mediate. While District asserts that Student's request is not genuine, District has not refused to participate in mediation. OAH will set mediation; however, either party can decline participation by canceling mediation.

All dates are vacated. The new dates in this matter are set out below.

Conduct of the Parties

As noted above, Student's current motions are 100 pages in length. Very little of the content provides facts, legal authority or argument pertinent to the motions before the undersigned. Much of document can best be termed as Parents' expression of their frustration over District's conduct, as perceived by them. The documents encompassing the motions, and attached exhibits, contain factual allegations and arguments that concern the underlying substantive aspects of this case and are not helpful to the determination of reconsideration of the order consolidating the cases, or the motion to continue. A substantial portion of the document is comprised of attachments of prior OAH orders, orders from other litigation, OAH's calendar and other documents. The attachments are unhelpful in determining the outcome of the motion and do nothing more than waste judicial resources.

Student is not alone in engaging in such conduct. The undersigned has reviewed the files in the consolidated cases. District is equally guilty in engaging in conduct that does nothing more than waste the resources of the parties and this tribunal. The following is a highlight of some of the filings in this action:

1. On December 31, 2012, District filed a motion to continue that was 62 pages in length;
2. On January 2, 2013, District filed a motion for stay put that was 155 pages in length;
3. On January 7, 2013, District filed an opposition to Student's motion for stay put that was 351 pages in length;

4. On January 8, 2013, Student filed an opposition to District's motion for stay put that was 74 pages in length;
5. On January 9, 2013, Student filed a response to District's motion to strike that was 230 pages in length;
6. On February 11, 2013, Student filed a motion to continue that was 110 pages in length;
7. On February 11, 2013, Student filed a response to District's motion to change venue that was 110 pages in length; and
8. On February 14, 2013, District filed a response to Student's motion to continue that was 57 pages in length.

Special education litigation can frequently be emotionally taxing on all parties. However, that does not justify conduct that is designed to frustrate the other party and to tax their emotional, physical and financial resources. The parties in this matter went through two due process hearings in 2012. A reading of the pleadings in this matter shows that the parties are engaged in multiple legal actions concerning Student. There appear to be both simultaneous criminal and civil proceedings concerning this Student and his education. The multiple litigations appear to be taking a toll on both parties.

Many of the documents that have been filed with OAH in this matter are orders and decisions from this matter and the previous matter, past correspondence between the parties, and court and other filings, and correspondence and orders from other non-OAH litigation between the parties. The parties have filed the same exhibits, purportedly related to motions and responses to motions, multiple times in this action. Sometimes an exhibit has been filed even when the other party has already included the same exhibit with the motion, or even when the same party has already filed the exhibit with another pleading in relation to the same motion.

OAH cannot control the behavior of the parties in their other actions, but OAH can control the behavior of the parties in this action. Education Code section 56505.1 sets forth the various rights of the ALJ. The right to control proceedings is an inherent right granted to each judicial tribunal, including an administrative forum. (*Mileikowsky v. Tenet Health System* (2005) 128 Cal.App.4th 531, 559 – 561.) OAH has an expectation that parties will conduct themselves in a manner that is not abusive of the process. While no finding is made in this order that either party has engaged in vexatious litigation or is trying to harass the other party, both parties should proceed with caution in the future.

Accordingly, the parties are ordered to refrain from filing any document longer than 30 pages in length, including any declarations and attachments. Any document longer than 30 pages in length shall be accompanied with a declaration setting forth why the party could not meet the restriction imposed by this order. If OAH determines that any future filing by either party in this matter violates this order, an Order to Show Cause may issue and sanctions may be imposed. If an Order to Show Cause why a party may not be sanctioned

due to its conduct is issued, the ALJ will consider the entire record in these consolidated cases in deciding the issue of sanctions.

ORDER

1. Student's motion to reconsider the consolidation order of January 22, 2013, is denied. The matters shall proceed as a consolidated action.

2. Student's motion to continue is granted. All dates are vacated and this matter is set as follows:

Mediation:	March 28, 2013, at 9:30 AM
Prehearing Conference:	May 13, 2013, at 1:30 PM
Due Process Hearing:	May 21,2013, at 9:30 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

3. The parties are prohibited from filing any document longer than 30 pages without a declaration setting forth why the party could not meet the page limit restrictions.

Dated: March 11, 2013

/s/

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