BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019100553

ORDER GRANTING REQUEST FOR RECONSIDERATION, VACATING ORDER TO SHOW CAUSE HEARING, AND GRANTING REQUEST FOR CONTINUANCE

JUNE 11, 2020

On June 8, 2020, the undersigned Administrative Law Judge issued an Order Following Prehearing Conference for Hearing by Videoconference, Order Denying Request for Continuance, and Order to Show Cause as to Why Matter Should not be Dismissed for Failure to Prosecute. On June 11, 2020, Student filed an Objection to Order to Show Cause Hearing and Request for Reconsideration for Motion for Continuance. The Office of Administrative Hearings, referred to as OAH, did not receive a response from Irvine School District.

APPLICABLE LAW

The Office of Administrative Hearings 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, generally within ten days. (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.)

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. (Ed. Code, § 56505, subd. (f)(3); 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 or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

DISCUSSION

Student offers a myriad of regurgitated reasons for needing a continuance which have previously been denied. However, Student offers one new circumstances to support reconsideration. Parent signed a declaration under penalty of perjury stating he recently moved and his internet is not sufficient to support a videoconference prehearing conference or hearing. Furthermore, Parent alleged he did not receive the Microsoft Teams invite for the prehearing conference. The motion for reconsideration is granted.

A prerequisite for a videoconference prehearing conference or hearing is a reliable internet connection. Using Microsoft Teams does not require parties to download any software or equipment, a web browser is sufficient. Student misunderstood the accommodation OAH put in place for Parent. The real time captioning service is not a feature of Microsoft Teams but rather a separate browser window with an accurate real time transcript of the prehearing conference and hearing. However, both still require a reliable internet connection. Therefore, Student's request for a continuance is granted. The hearing will proceed on November 17, 2020, as a videoconference hearing to give Student sufficient time to secure a reliable internet connection and a location where Parent and advocate can be together for the prehearing conference and hearing. OAH may change the location of the hearing to an in person hearing, or provide a location at an OAH regional office for Parent and advocate with reliable internet connection, if the general order regarding in person hearings changes.

Regarding Student's assertion that Parent has given "co-educational rights" to Advocate, Student has not provided any legal documentation that Advocate holds educational rights. Educational rights are not something that can be transferred at the whim of a parent. Educational rights are the decision making rights that parents hold and are more than the ability to speak on behalf of a student in a due process hearing. A parent is a biological or adoptive parent, a foster parent if a court has limited a biological or adoptive parent's rights, a guardian authorized to act as a parent or authorized to make educational decisions, an individual acting in place of a parent with whom the child lives or an individual who is legally responsible for the child's welfare, a surrogate parent appointed by a court, or a person authorized to make educational decisions by a court. (Ed. Code, § 56028.) Here, Advocate is none of these. Student does not live in California, much less with Advocate. Student has not presented any evidence that Advocate is acting as a parent or is needed to make decisions for Student. Parent has repeatedly asserted that Advocate is necessary to speak for him in legal proceedings but has not asserted that Advocate is needed to make decisions for Student. By continuing to hold Advocate out as a "co-educational rights holder" without any legal documentation to support that contention, Advocate is attempting to circumvent the unauthorized practice of law.

ORDER

1. Student's motion for reconsideration is granted.
2. The Order to Show Cause Hearing set for June 12, 2020, at 1:00 PM is vacated.
3. Student's request for a continuance is granted. The prehearing conference in this matter is now scheduled for November 6, 2020, at 1:00 PM. The hearing is continued to November 17, 2020, through November 19, 2020.

4. The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not possible to file the motion by that date. Parties shall notify all witness of the new dates for hearing.

IT IS SO ORDERED.

DocuSigned by:
Linda Johnson
5092A92341544B9...

Linda Johnson

Administrative Law Judge

Office of Administrative Hearings