BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015070101
v.	ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING MOTION TO CONTINUE
KENTFIELD SCHOOL DISTRICT.	

On December 21, 2015, the undersigned issued an order denying the parties' joint request for a continuance. On December 21, 2015, Student filed a motion for reconsideration. No response has been received from Kentfield School District.

This case was originally filed on June 19, 2015. The case was continued, at the joint request of the parties, on July 23, 2015, and the hearing was set in October 2015. The parties participated in mediation in August 2015 and jointly requested another continuance for hearing dates later in October 2015, which was again granted.

The parties filed another request for continuance on September 11, 2015. This third request for continuance was granted and the hearing was set for December 2015. On November 2, 2015, the parties made a fourth request for continuance, which was denied. Student requested reconsideration of the denial, and reconsideration was denied.

Student then filed an amended complaint on November 23, 2015, and the motion to amend was granted on the same date. The hearing was set to begin on January 19, 2015,. The parties filed a fifth joint request to continue this matter on December 17, 2015. However, the parties incorrectly marked the box indicating that this was an initial request for continuance, and did not support the request with any declarations or other support showing good cause.. The motion to continue was again denied.

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. (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. (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

Reconsideration

Student alleges new facts and circumstances in support of the request reconsideration. Therefore, reconsideration of the motion to continue is granted.

Continuance

Upon reconsideration, the request for continuance is denied. This matter has already been continued four times, and the hearing dates were postponed a fifth time by operation of law when the motion to amend was granted.[1] Student's attempt to characterize the December 17, 2015 as an initial motion to continue is without merit. Amending the complaint restarts the timeline to hear and decide the case, thus affording the parties the opportunity to resolve their dispute at a new resolution session. It does not obviate Congress' concern for the prompt resolution of these disputes.

Student has not shown good cause for a continuance because his attorney is scheduled for hearing in another case on the same dates in January . That case was filed later than this one. This matter therefore takes precedence and will not be continued so a later filed case can proceed.

[1] An amended complaint restarts the timeline for a due process hearing. (20 U.S.C.§ 1415(c)(2)(E)(II)(ii).)

Student has also not shown good cause to continue this matter so Parents can observe a classroom in order to evaluate a new placement offer. Such events are always part of the evolving relationship between parents and districts, and if recognized as grounds to continue could delay resolution of disputes indefinitely.. It was Student's choice to amend his complaint and join his new concerns with those that became ripe for resolution in June 2015, rather than filing a separate action addressing later developments. That choice carries with it the obligation to resolve the dispute promptly.

ORDER

The Motion for Reconsideration is Granted. The Motion to Continue is Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared.

IT IS SO ORDERED.

DATE: December 23, 2015

/S/
MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings