BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>LOS ALTOS SCHOOL DISTRICT. | OAH Case No. 2014060171<br><br>ORDER GRANTING REQUEST FOR RECONSIDERATION AND REQUEST TO CONTINUE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING |

On November 20, 2014, the undersigned Presiding Administrative Law Judge issued an order denying the parties' joint request for a continuance on the grounds that the parties had failed to establish good cause for a continuance. On November 24, 2014, F. Richard Ruderman, attorney for Student, filed a request for reconsideration contending that Student was unavailable for the currently set hearing date due to a preplanned trip out of the state. The Office of Administrative Hearings did not receive a response from the Los Altos School District.

## APPLICABLE LAW

*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

Student filed the initial complaint in this matter on June 2, 2014. Subsequently at mediation, the parties reached an interim agreement, and requested a continuance to accomplish the terms agreed to in that agreement. OAH granted the continuance and set this matter on dates agreed to by the parties in November 2014. This was a substantial continuance. On October 9, 2014, Student moved to amend his complaint. OAH granted the request, and the dates in this matter were reset to ensure compliance with the legally mandated timeline for OAH to issue a decision. This further delayed a final resolution of this matter. On November 20, 2014, the parties moved to continue the case further, but provided no information to establish good cause because they mistakenly believed this was the first request to continue. OAH denied the request.

In the request for reconsideration, Student, for the first time, asserts that he is unavailable due to a preplanned trip to Massachusetts. However, this information was available to Student's counsel when he filed the November 20, 2014 request to continue. These are not new facts previously unknown or unavailable to the party. Mr. Ruderman contends that when OAH reset the matter on October 20, 2014, it was OAH's responsibility to contact the parties and determine if they were available for a December 16, 2014 hearing. OAH scheduled the hearing for December 16, 2014, in order to meet its obligations to reset the timeline after Student amended the complaint and issue a decision within the legally mandated timeline. Mr. Ruderman is an experienced practitioner before OAH in special education disputes and should understand the importance of protecting a student's legal right to have a case resolved in a timely manner consistent with both state and federal law. OAH has no obligation to consult with the parties prior to scheduling cases in compliance with the mandated time frame, and operational needs do not allow it.

OAH relies upon parties, and their legal counsel, to manage their own calendars and to timely request a continuance, and provide good cause for the request. Here, not only did Student's counsel timely receive the October 20, 2014 order setting the December 16, 2014 hearing date, but Parents also received the notice. The burden was on Student's counsel and Parents to inform OAH of their unavailability.

For all of the reasons discussed above, OAH is inclined to deny the request for reconsideration. However, the procedural safeguards set out in the IDEA are guaranteed to children with disabilities and their parents, and are for their benefit. (See *Lake Washington Sch. Dist. No. 414 v. Offc. Of Superintendent of Public Instruction* (2011) 634 F.3d 1065, 1067-1068.) Therefore, to deny Student's request for reconsideration and continuance due to Student's counsel's conduct and due to the lack of due diligence by Parents, would be to deny Student his procedural safeguards. Accordingly, the request for reconsideration and request to continue is granted.

ORDER

1. Student's request for reconsideration is granted.

2. Student's request for continuance is granted. All dates in this matter are vacated.

3. This matter is set as follows:

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| Prehearing Conference: | December 22, 2014, at 10:00 AM |
| Due Process Hearing: | December 30 – 31, 2014, at 9:30 AM and continuing day to day, Monday through Thursday at the discretion of the Administrative Law Judge |

DATE: December 4, 2014

**/s/**

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