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 NO. 2013110737 ORDER GRANTING REQUEST FOR RECONSIDERATION, GRANTING CONTINUANCE AND SETTING MEDIATION, PREHEARING CONFERENCE AND DUE PROCESS HEARING

On February 28, 2014, the undersigned administrative law judge issued an order denying the parties request to continue this matter on the grounds that the parties had failed to establish good cause for a further continuance. On March 3, 2014, Student filed another request to continue. This request is treated as a request for reconsideration of the February 28, 2014 order.

APPLICABLE LAW

The Office of Administrative Hearings (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.)

DISCUSSION AND ORDER

This matter was set for a prehearing conference (PHC) on March 3, 2014. The parties filed their joint continuance request near the close of business on February 28, 2014, the last business day prior to the PHC. The grounds given for the requested continuance were that the parties wished to hold an individualized education program (IEP) team meeting and participate in mediation. There was no explanation for why an IEP team meeting was needed or how it might resolve this matter, rather than raise new disputes. The parties request to mediate was suspect as well, since the parties have previously canceled mediation that OAH has calendared. The request was denied.

In the request for reconsideration, Student's counsel, Ms. Vanessa Jarvis, reveals that Student's expert has become unavailable for the days currently set for hearing in this matter. What is disturbing to OAH is that Student's counsel knew of this unavailability on February 9, 2014, yet waited 19 days and the day before the PHC to request a continuance. Equally disturbing is that the parties chose to give as reasons for the continuance request terms they had negotiated between themselves, rather than inform OAH that a critical witness was unavailable. Ms. Jarvis' hubris is further demonstrated by her failure to file a PHC statement because she assumed OAH would grant a further continuance in this matter.

Such delays in filing pleadings and failures to file required PHC statements by counsel result in lost time and resources for OAH, as well as additional litigation expenses for the parties because their attorney then has to file for a reconsideration. Further conduct of this type may result in an order to show cause as to why counsel should not be ordered to pay OAH's costs.

However, the parties should not be penalized for the poor conduct of their counsel. The unavailability of a critical witness for Student, considered together with Irvine Unified School District's joining in the February 28, 2014 request for continuance is sufficient to reconsider the February 28, 2014 order. The request for reconsideration is granted.

The unavailability of a critical witness and the request for mediation constitute minimal good cause for a continuance. The request to continue is granted. This matter will be set as follows:

1. Mediation shall take place on April 15, 2014, at 9:30 a.m.

2. PHC shall take place on May 12, 2014, at 1:00 p.m.

3. Due process hearing shall take place on May 20 – 22, 2014, starting at 9:30 a.m.

4. There will be no further continuances in this matter.

IT IS SO ORDERED.

DATE: March 4, 2014

/s/

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