BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

DEL NORTE COUNTY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024110598

ORDER GRANTING STUDENT'S REQUEST FOR RECONSIDERATION AND GRANTING DEL NORTE'S MOTION TO CONTINUE

DECEMBER 17, 2024

On December 2, 2024, the undersigned Administrative Law Judge, called ALJ, issued an order granting Del Norte County Unified School District's request to continue the prehearing conference, called PHC, and due process hearing. The order found Del Norte established good cause for a continuance because Del Norte's attorney had a scheduling conflict with another matter before the Office of Administrative Hearings, called OAH, OAH Case number 2024080523, which was filed prior to the current matter. Additionally, the order found Del Norte established good cause to continue the hearing until January 14, 2025, due to the unavailability of Del Norte's representative.

On December 6, 2024, Student filed a motion for reconsideration concerning Del Norte's motion to continue and declaration. Student asserted the undersigned ALJ issued the order granting Del Norte's request without giving Student three business days to file an opposition. On December 2, 2024, after the order was issued, Student submitted an opposition. Student also argues Del Norte's motion was made in bad faith and supports this claim with new facts that OAH case number 2024080523 was settled as of December 5, 2024. On December 16 and 17, 2024, Del Norte filed an opposition to Student's motion for reconsideration. On December 17, 2024, Student filed a reply to Del Norte's opposition.

RECONSIDERATION

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 10 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.)

Student offers new facts and circumstances to support reconsideration. Student is correct that the undersigned ALJ issued the December 2, 2024, order granting Del Norte's motion to continue without giving Student three business days to file an opposition. The Order did not address Student's arguments in opposition to Del Norte's motion to continue. The motion for reconsideration is granted.

DEL NORTE'S MOTION TO CONTINUE AND STUDENT'S OPPOSITION

On November 25, 2024, Del Norte filed a request to continue the PHC and due process hearing with OAH. The PHC in this matter was scheduled for 10:00 AM on December 2, 2024, and a due process hearing scheduled for December 10, 2024, through December 12, 2024. Del Norte asserted its attorney was unavailable for a PHC on December 2, 2024, at 10:00 AM and a due process hearing on December 10, 2024, through December 12, 2024, due to a conflict with another matter before OAH, filed earlier than this current matter, with conflicting dates for the PHC and due process hearing.

On December 2, 2024, at 4:01 PM, Student filed an opposition to Del Norte's motion to continue. Student argued Del Norte's winter break was not good cause for a continuance of the due process hearing. Student also argued Del Norte's motion did not include a declaration by Del Norte's attorney that OAH case number 2024080523 had not settled and was otherwise expected to proceed to hearing, and that the supporting declaration by Jennifer Armington was too vague to support good cause for a continuance. Despite opposing Del Norte's motion, Student agreed to a brief, two-week continuance of the due process hearing to December 17, 2024.

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, or other excusable circumstances;
- A party is unavailable because of death, illness, or other excusable circumstances;
- A party's attorney is unavailable because of death, illness, or other excusable circumstances;
- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice;
- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a reasonable opportunity to prepare for trial regarding the new party's involvement;
- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Del Norte established good cause for a continuance due to the unavailability of its attorney, supported by its motion and attachments. OAH's public calendar supported Del Norte's assertions that OAH case number 2024080523 had PHC and due process hearing dates conflicting with the dates in this matter. On December 2, 2024, at 10:00 AM Del Norte's attorney appeared for the PHC in OAH case number 2024080523. On December 4, 2024, at 7:41 AM, the petitioner in OAH case number 2024080523 filed a notice of settlement pending school board approval.

Del Norte was not required to include a declaration by Del Norte's attorney that OAH case number 2024080523 had not settled and was otherwise expected to proceed to hearing. At the time of Del Norte's motion to continue, OAH case number 2024080523 had not settled and all dates remained on the calendar.

Del Norte asserted in its motion to continue, supported by a sworn declaration, that Del Norte's representative was not available for a due process hearing between December 23, 2024, through January 8, 2025. Student is correct that a school district winter break does not constitute good cause for a continuance. However, Del Norte did not argue that its winter break constituted good cause for a continuance. Jennifer Armington, Del Norte's Director of Special Education, declared under penalty of perjury, she was unavailable to attend a due process hearing between December 16, 2024, and December 20, 2024, due to medical appointments, dentist appointments, and caregiving duties. Ms. Armington further declared she was unavailable from December 23, 2024, through January 5, 2025, due to a prepaid, preplanned, family vacation. Upon re-review of Ms. Armington's declaration, she did not offer good cause as to her unavailability between January 6, 2025, and January 9, 2025.

Del Norte's motion to continue is granted. All previously scheduled dates are vacated.

PREHEARING CONFERENCE will be held on December 27, 2025, at 10:00 AM.

DUE PROCESS HEARING will be held on January 7, 2025, through

January 9, 2025.

The prehearing conference and due process hearing will be held by videoconference or telephone, unless otherwise ordered. The due process hearing will

begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, Mondays and Fridays included, 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. Late motions will only be considered if good cause is established for the late filing.

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing.

ORDER

On reconsideration, Del Norte's motion to continue is granted. All dates set in this matter are confirmed, as set forth above.

IT IS SO ORDERED.

Cararea Lucier

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings