BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT

AND

MAGNOLIA SCIENCE ACADEMY - SANTA ANA,

OAH CASE NUMBER 2023010808

OAH CASE NUMBER 2023010438

ORDER DENYING STUDENT'S MOTION FOR RECONSIDERATION OF DISMISSAL OF STUDENT'S ISSUES AND ORDER DENYING STUDENT'S MOTION FOR CONTINUANCE OF DUE PROCESS HEARING

April 11, 2023

Parent did not file a prehearing conference for, and did not appear at, the April 3, 2023, prehearing conference on these consolidated matters. The prehearing conference proceeded as to Magnolia Science Academy's complaint. On April 4, 2023, Administrative Law Judge Clifford H. Woosley issued an Order to Show cause. ALJ Woosley ordered, Parent to file a statement explaining why Student's issues should not be dismissed for not appearing at the April 3, 2023 prehearing conference to diligently

pursue Student's case and to file a prehearing conference statement, by 5:00 PM, Thursday, April 6, 2023.ALJ Woosley continued the hearing one week, to April 18 through 20, 2023, to accommodate the schedule set forth in the Order to Show Cause, giving Parent an opportunity to respond.

Parent did not file the documents as ordered. On April 7, 2023, ALJ Woosley issued an Order of Dismissal of Student's Issues.

On April 10, 2023, Parent filed a letter request. Parent seeks reconsideration of the Order To Show Cause and the dismissal of Student's issues. Student also moves to continue the hearing for 30 to 60 days. Parent did not provide a declaration under penalty of perjury. The letter's factual statements are accepted, as stated, for purposes of ruling on Student's motions.

MOTION FOR 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 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.)

Parent stated that the day before the April 3, 2023, prehearing conference, Student had an unexpected medical situation, which required emergency intervention. Also, Parent injured her foot, with a possible fracture, the week before. Parent claimed that the same medical needs prevented Parent from timely responding to the Order to Show Cause.

These new facts are not sufficient to justify reconsideration of the Order to Show Cause and the Order Dismissing Student's Issues. Parent does not explain why Parent could not have contacted OAH or Magnolia Science's counsel before the April 3, 2023, PHC. Additionally, these new facts do not excuse Parent from not responding to the Order to Show Cause.

Notably, Parent's letter motion does not address Student's failure to follow OAH procedures and orders. Parents on behalf of Student filed a request for due process on January 26, 2023. OAH issued a scheduling order, setting the hearing for March 6, 2023. On February 6, 2023, Student filed an amended complaint and OAH issued a second scheduling order, setting the PHC for March 17, 2023, and the hearing for March 28, 2023. On March 16, 2023, OAH issued an order granting a continuance to the dates requested by Parents, setting the PHC for April 3, 2023, at 3:00 PM, and the hearing for April 11, 12, and 13, 2023. On March 17, 2023, OAH granted Magnolia Science's motion to consolidate, affirming the April 3, 2023 PHC and the April 11, 2023 hearing dates.

The scheduling orders instructed Student to file and serve a Prehearing Conference Statement at least three business days before the prehearing conference. Student should have filed a Prehearing Conference Statement for the March 16, 2023 PHC; Student did not. Student failed to file a Prehearing Conference Statement for the April 3, 2023 PHC, did not file a statement as instructed in the April 4, 2023 Order to Show Cause, and did not include a Prehearing Conference Statement with Student's April 10, 2023 motion for reconsideration. Parent's letter motion does not address these repeated failures to file a Student's prehearing conference statement. In compliance with the scheduling orders.

Parent's letter motion, on behalf of Student, does not provide facts, circumstances, or law which justifies reconsideration of the April 4, 2023 Order to Show Cause or the April 7, 2023, Order of Dismissal of Student's Issues.

Student's request for reconsideration is denied. These consolidated matters will proceed to hearing on Magnolia Science's issues, only.

MOTION TO CONTINUE HEARING

Student moves that the hearing be continued for 30 to 60 days, to allow Parent to prepare and upload records to Case Center.

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; 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. (Cal. Rules of Court, rule 3.1332(d).)

Here, Student has failed to demonstrate good cause for a continuance. Since the January 2023 filing of Student's complaint, the hearing has been continued three times. Once upon Student's filing of an amended complaint, once on Student's motion to continue, and once following Parent's failure to appear at the April 3, 2023 prehearing conference.

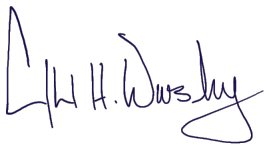
From the initial filing of Student's complaint, Parent was aware of the issues and the documentation upon which Parent would rely to support Student's issues. Additionally, Student's requested continuance would result in a hearing more than six months from the initial filing. Finally, Magnolia Science is entitled to a hearing of its request for an order allowing assessment of Student, without further delay.

Student has not demonstrated good cause and the motion to continue is denied.

ORDER

1. Student's motion for reconsideration is denied. Student's issues are dismissed, and the due process hearing will proceed as to Magnolia Science's issues.
2. Student's motion for continuance of the hearing is denied.
3. The due process hearing shall take place, as presently scheduled, on April 18, 19, and 20, 2023.

IT IS SO ORDERED.



Clifford H. Woosley
Administrative Law Judge
Office of Administrative Hearings