

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LIBERTY UNION HIGH SCHOOL
DISTRICT AND KNIGHTSEN
ELEMENTARY SCHOOL DISTRICT.

OAH CASE NO. 2014040525

ORDER GRANTING REQUEST FOR
RECONSIDERATION; GRANTING
REQUEST TO CONTINUE; AND,
SETTING PREHEARING
CONFERENCE AND DUE PROCESS
HEARING

On April 28, 2014, the Knightsen Elementary School District (Knightsen) filed a request to continue the dates in this matter on the grounds its counsel was unavailable on the currently scheduled dates. On April 29, 2014, Student filed an opposition to the request. No opposition from Liberty Union High School District (Liberty) was received. On May 8, 2014, the undersigned denied Knightsen's request to continue on the grounds that its counsel had not provided sufficient information regarding the conflicts, and thus had failed to establish good cause. Knightsen was invited to file, and on May 9, 2014, did file, a request for reconsideration with supplemental information in the form of a declaration under oath by its counsel. No opposition has been received from either Student or Liberty.

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 AND ORDER

Reconsideration

The declaration of Knightsen's counsel provides details regarding his conflicts in other matters that make him unavailable for the currently set June 3, 2014 due process hearing in this matter. The reconsideration provides new facts, consistent with the May 8, 2014 order and reconsideration is granted.

Request to Continue

Knightsen's counsel's unavailability establishes good cause for a continuance. Further, the continuance request is only for one week and is a reasonable request in light of the conflicts. Accordingly, the request to continue is granted. This matter will be set as follows:

Mediation:	May 14, 2014, as currently scheduled.
Prehearing Conference:	June 2, 2014, at 3:00 PM.
Due Process Hearing:	June 10, 2014, at 9:30 AM and continuing day to day, Monday through Thursday as determined by the Administrative Law Judge presiding at the hearing.

IT IS SO ORDERED.

DATE: May 13, 2014

/s/

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