

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MAGNOLIA ELEMENTARY SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014050832

ORDER DENYING REQUEST FOR
RECONSIDERATION AND IN THE
ALTERNATIVE, MOTION FOR
CONTINUATION

On June 2, 2014, the undersigned administrative law judge issued an order denying Student's motion to continue the Due Process Hearing.¹

On June 5, 2014, Student filed with the Office of Administrative Hearings a motion for reconsideration of request for continuance, or in the alternative, motion for continuance.

RECONSIDERATION

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.)

DISCUSSION AND ORDER

In denying the initial request for continuance in the Prehearing Conference order, the undersigned stated (Order following Prehearing Conference of June 2, 2014, p. 3):

The first [motion] is to continue the hearing to permit the parties to attend mediation. The District opposed the motion on grounds that it did not desire to mediate the matter. Accordingly, the motion to continue is **DENIED**.

¹ The order was part of the Order Following Prehearing Conference of June 2, 2014.

Student alleges no new facts, circumstances, or law in support of the request for reconsideration. Student contends that the order denying the request for continuance may have been a result of a mix-up where Student's counsel did not attend the Prehearing Conference. This is based on the allegation that the undersigned ALJ failed to cite any facts in support of the order. This contention is in error. The ALJ cited that the District did not desire to mediate the matter as stated in its opposition and orally at the Prehearing Conference. Mediation is voluntary and a party cannot be compelled to attend mediation. Accordingly, Student's motion for reconsideration is DENIED.

CONTINUANCE

Alternatively, Student renews his motion for continuance. Student seeks a continuance on grounds that "the late notice" by which his request for continuance was denied, the delay in scheduling mediation, and "the press of other firm business has created hardship" on Student and his attorneys. In a supporting declaration, attorney Amanda Selogie contends that the firm has several scheduling conflicts including preparation for a federal trial and numerous Individualized Education Program (IEP) meetings.

Student's contention that he received late notice of the denial for the continuance request is without merit. Student filed his continuance request on May 28, 2014 and OAH ruled on this request within three business days of its receipt. Student fails to offer any evidence as to any delay in scheduling mediation. In its opposition to the original motion, the District alleged that Student's counsel requested a change in mediation date two days prior to the May 29, 2014 scheduled mediation. Student sought to re-schedule the mediation to dates after the scheduled hearing date. The District refused to continue the hearing date to hold mediation. Student's counsel's office then offered to hold the mediation on June 5, 2014. Later on May 29, 2014, District's counsel's office informed Student's counsel that it did not desire to mediate. Mediation is voluntary and can not be compelled. The District here desired to proceed to hearing without attending mediation. Thus, there was no delay in scheduling mediation. The only "delay" was Student's counsel waiting to the last minute to attempt to re-schedule mediation.

Student fails to set forth sufficient grounds to delay the hearing. Student presented no facts in support of his contention that there "several scheduling conflicts." Student has been represented by three attorneys as indicated in the pleadings filed by Student. Additionally, Student could have raised the same argument in his original motion. The failure to do so infers that Student's counsel is only using this argument as a pretext to delay the scheduled due process hearing. Accordingly, Student's motion for continuance is DENIED.

IT IS SO ORDERED.

DATE: June 06, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings