

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FULLERTON SCHOOL DISTRICT AND
FULLERTON JOINT UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2014020217

ORDER GRANTING REQUEST FOR
RECONSIDERATION, GRANTING IN
PART REQUEST FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On June 17, 2014, Fullerton School District (Fullerton) and Student filed a request to continue the hearing date in this matter to September 23, 2014.¹ On June 20, 2014, the undersigned administrative law judge denied the parties' request. On June 25, 2014, Fullerton filed a request for reconsideration.

APPLICABLE LAW

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. (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.)

Continuance

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

¹ As discussed below, the parties represent that the matter has settled as to Fullerton Joint Union High School District.

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

Fullerton raises several grounds, some already considered, some new. Specifically, as new facts, Fullerton asserts that the case against the Fullerton Joint Union High School District (Fullerton High) has settled, and Fullerton has become aware of the unavailability of Student's teacher for the currently calendared hearing dates. Based on the newly alleged facts, Fullerton's request for reconsideration is granted.

Continuance

Fullerton asserts that the undersigned was required to provide a reason for the June 20, 2014, denial of the parties' request for continuance. Parent has contacted OAH's staff and asked similar questions. The parties may rest assured that the undersigned considered all facts and contentions of the parties prior to ruling upon their continuance request. This matter was filed on February 5, 2014, and the parties requested hearing date would have placed this matter at approximately more than nine months from the date of filing to the issuance of a written decision. Such a long delay contradicts the Individuals with Disabilities Education Act's mandate of a speedy resolution. Furthermore, Fullerton's contention, in the original request, that the parties were entitled to a continuance because Fullerton was in summer recess was also unsupported by the IDEA. The IDEA does not suspend due process proceedings during summer breaks. To do so would bring the entire special education due process hearing system to a grinding halt across the country. Finally, while Fullerton's representative stated she was unavailable, no information was provided as to why she was the only person who could act as Fullerton's representative.

With respect to the new information provided by Fullerton, first the settlement with Fullerton High has no bearing on the hearing dates as to Fullerton. Second, Fullerton's assertion that this is the first continuance is incorrect. A bifurcation did not result in this case being a newly filed case. The case was filed on February 5, 2014, and the initial hearing date was in April 2014. Third, the dates for July were set on March 24, 2014, and the parties waited until June 17, 2014, to file a request to continue. The delay is deeply concerning.

Equally of concern is Fullerton's assertion that it found out only on June 23, 2014, that Student's teacher would be on vacation in Utah during the month of July. Fullerton's counsel asserts that he has practiced in special education litigation for many years. That being true, it should not come as a surprise to counsel that potential school district witnesses may be on pre-paid and pre-planned vacations during summer recess. The most disconcerting fact to the undersigned is that there is neither a declaration from Student's teacher, nor any information establishing that she pre-paid and pre-planned her July vacation prior to the March 24, 2014 scheduling order in this matter.

Despite these concerns regarding the conduct of Fullerton in its attempts to obtain a continuance through reconsideration, a brief continuance is granted. All dates as to Fullerton are vacated. The matter, as to Fullerton, shall be set as follows:

Prehearing Conference:	August 1, 2014, at 1:00 PM
Due Process Hearing:	August 12, 2014, at 9:30 AM, and continuing day to day, Monday through Thursday, at the discretion of the ALJ presiding at the hearing

All dates as to Fullerton High remain as calendared pending any notice of settlement from the parties as to the issues concerning Fullerton High.

IT IS SO ORDERED.

DATE: June 26, 2014

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