

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PAJARO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014050575

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

On June 11, 2014, the undersigned denied a request for continuance from the Pajaro Valley Unified School District (Pajaro). On June 19, 2014, Pajaro filed a request for reconsideration. On June 24, 2014, Student filed an opposition and on June 25, 2014, Pajaro filed a response to the opposition.

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 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

Pajaro contends that on June 17, 2014, it learned of the unavailability of its school psychologist due to medical reasons. Pajaro further clarifies the need for its representative to participate in the due process hearing and states that she is unavailable as well. While the unavailability of the representative was previously alleged, the unavailability of the school psychologist was not known to Pajaro previously and constitutes new facts; and therefore, the request for reconsideration is granted.

Continuance

With respect to the continuance, Pajaro has provided a sworn declaration from the school psychologist to establish her unavailability. Pajaro has also requested that Student's opposition be disregarded as it was filed beyond three business days from Pajaro's request for reconsideration. While it was technically late, Student's opposition has been considered. After full consideration of the parties' contentions, the length of time this matter has been pending and all of the evidence submitted by the parties, Pajaro's request for continuance is granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference:	August 1, 2014, at 10:00 AM
Due Process Hearing:	August 12, 2014, at 9:30 AM, and continuing day to day Mondays through Thursday, at the discretion of the Administrative Law Judge

IT IS SO ORDERED.

DATE: June 26, 2014

/s/

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