

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CHAFFEY JOINT UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2014041138

ORDER DENYING REQUEST FOR
RECONSIDERATION

On August 4, 2014, Student's attorney Tania Whiteleather filed a unilateral request to continue the prehearing conference, scheduled for August 4, 2014 at 1:00 p.m., and the due process hearing, based on her scheduling conflicts. The undersigned administrative law judge (ALJ) partially granted the request to continue the telephonic prehearing conference by trailing the prehearing conference to 3:00 p.m. on August 4, 2014. The prehearing conference took place; Ms. Whiteleather did not appear; the ALJ considered both parties' requests for continuance and granted a continuance of the due process hearing. On August 7, 2014, Ms. Whiteleather filed an Objection to Denial of Due Process, Objection to Setting of Due Process Dates without Input from Petitioner, and Motion to Reschedule PHC and to Continue Hearing Dates.

The Office of Administrative Hearings (OAH) regards this filing as a motion for reconsideration of the prehearing conference order issued on August 5, 2014, granting a continuance of the hearing dates. OAH did not receive a response from District. For the reasons discussed below, reconsideration is denied.

APPLICABLE LAW

OAH 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

The motion for reconsideration asks the ALJ to reconsider the prehearing conference order by reconvening the prehearing conference to allow Ms. Whiteleather to participate, and

to consider Ms. Whiteleather's scheduling conflicts with the continued hearing dates set at the prehearing conference.

The prehearing conference in this matter was scheduled for August 4, 2014 at 1:00 p.m. pursuant to a June 3, 2014 order granting a joint request for continuance. Ms. Whiteleather's last minute August 4, 2014 request for a continuance of the prehearing conference stated that she had originally been scheduled to appear in federal court on August 4, 2014, at 3:00 p.m. The federal court informed her on Friday, August 1, 2014, that the federal court hearing had been rescheduled to August 4, 2014, at 1:30 p.m. Ms. Whiteleather proposed in her request for continuance that OAH reschedule the prehearing conference to Tuesday, August 5, 2014, with full knowledge that OAH only conducts telephonic prehearing conferences on Mondays and Fridays. She offered no other alternative. She also did not offer any credible explanation why she did not submit a request for continuance of the prehearing conference before August 4, 2014, given her prior knowledge of the potential conflict with a federal court hearing scheduled for the same date and within two hours of the prehearing conference in this matter.

Because Ms. Whiteleather no longer had a conflicting hearing at 3:00 p.m. on Monday, August 4, 2014, OAH continued the prehearing conference to 3:00 p.m. At 12:25 p.m. on August 4, 2014, OAH gave telephonic notice to Ms. Whiteleather's assistant, Patti Schiffner, that the telephonic prehearing conference would be continued to 3:00 p.m. that same day. Ms. Schiffner stated she would notify Ms. Whiteleather. The undersigned ALJ attempted to reach Student's attorney at the designated time. Ms. Whiteleather was unreachable at her office or on her mobile phone at 3:00 p.m. and at 3:15 p.m. and no other attorney was available on her behalf. District's counsel was available and the ALJ held the prehearing conference. Regarding the due process hearing dates, Student's August 4, 2014 request for a continuance stated that Ms. Whiteleather was scheduled to appear in another special education due process hearing in Fresno, California on two of the dates calendared for the due process hearing in this case, specifically on August 14 and 15, 2014, requiring Ms. Whiteleather to travel on August 13, 2014. Student's request proposed no specific alternate dates after August 15, 2014.

Although Ms. Whiteleather offered in her motion for reconsideration new facts regarding her availability after August 15, 2014, she provided no credible explanation why those facts were not offered in her August 4, 2014 request for a continuance. Therefore, those facts are not a basis on which to grant reconsideration.

Further, the federal case conflicts identified in Student's motion for reconsideration do not conflict with much of the due process hearing in this case; one of the special education due process matters listed currently has a motion to amend pending, the granting of which would reset the procedural timelines and vacate the existing dates; and the other special education due process matter listed is for a one-day setting on a case that was filed after Student's case, giving Student's case higher priority for starting. Ms. Whiteleather may raise any scheduling conflicts that exist on the first day of hearing in this case at the beginning of the hearing.

Student has not established grounds for reconsideration of the prehearing conference order granting a continuance of the due process hearing dates. Accordingly, Student's request for reconsideration is denied. No further telephonic prehearing conference will be held, and the due process hearing will proceed as scheduled unless otherwise ordered based upon a showing of good cause. All dates are confirmed.

IT IS SO ORDERED.

DATE: August 12, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings