

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT,

OAH Case No. 2014070965

LINCOLN UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014060819

ORDERS DENYING MOTION FOR
RECONSIDERATION, MOTION TO
CONTINUE HEARING, AND REQUEST
FOR ORAL ARGUMENT

On September 17, 2014, these matters came on for due process hearing. At the outset of the hearing, undersigned Administrative Law Judge denied Student's motion to amend his complaint, filed that same day, on the ground that it was untimely and barred by statute. On October 15, 2014, Parent on behalf of Student filed a motion for reconsideration of that ruling, a motion for a continuance of the due process hearing now scheduled to resume on October 21, 2014, and a request for oral argument on both motions. On October 16, 2014, Lincoln filed an opposition to the motions for reconsideration and continuance.

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 of Denial of Motion to Amend

Student does not explain why he believes reconsideration of the denial of his motion to amend should be granted, nor does he offer any new or different facts, circumstances, or law justifying reconsideration. In any event the motion to amend, filed on the morning of hearing, was unquestionably barred by 20 U.S.C. § 141(c)(2)(E)(II), which authorizes the hearing officer to allow an amendment to a complaint but then provides: "the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs." Accordingly, Student's motion for reconsideration is denied.

Motion for Continuance

On September 17, 2014, at the beginning of the hearing, Father, representing Student, moved for a continuance based on his ongoing medical conditions. A continuance of 34 days was granted, and Father was interviewed in depth by OAH's Americans with Disabilities Act Coordinator in order to determine whether his medical condition warranted any accommodation, including a continuance. The Coordinator and Father had extensive contact during the 34 days the matter was continued, but no accommodation was found to be necessary.

On October 15, 2014, Father filed a motion for continuance that gave no reason for desiring a continuance and was unsupported by any accompanying documentation. That alone is grounds for denying it because the motion did not demonstrate good cause for continuance. In addition, to the extent that Father's motion may be based on a renewed claim of medical necessity, Father has had extensive opportunity to demonstrate a medical need for further continuance to the Coordinator and has been unable to do so. For all these reasons, the motion to continue is denied.

Accompanying Student's motions was a request for oral argument on the motions. Father gave no reason why oral argument should be scheduled. Since the request lacks any showing of need or cause, it is also denied.

ORDER

1. Student's motion to reconsider the September 17, 2014 order denying his motion to amend his complaint is denied.
2. Student's motion to continue is denied.
3. Student's request for oral argument on the above motions is denied.
4. The hearing shall proceed on October 21, 2014, as now calendared.

DATE: October 17, 2014

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings