

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ELK GROVE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015010203

ORDER GRANTING REQUEST FOR
RECONSIDERATION, GRANTING
MOTION TO CONTINUE, AND
VACATING SCHEDULED FIRST DAY
OF HEARING ONLY

On February 24, 2015, the undersigned administrative law judge issued an order denying Student's motion to continue the due process hearing scheduled to begin on February 26, 2015. On February 25, 2015, Student filed a motion for reconsideration of that ruling and provided a declaration indicating that Student's counsel, Guy Leemhuis, has a conflicting hearing scheduled in another court at 10:30 a.m. on February 26, 2015. Elk Grove Unified School District opposed the motion for reconsideration and motion to continue.

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

Student alleges new facts, circumstances, or law in support of the request reconsideration. The new fact, as contained in Mr. Leemhuis's declaration, is that he is scheduled for a hearing in a probate matter in Los Angeles at 10:30 a.m. on Thursday, February 26, 2015. He also provided clarification that he was assigned to the probate matter on December 31, 2014, prior to this matter being filed with OAH by Elk Grove. Mr. Leemhuis's declaration presents no scheduling conflict for Friday, February 27, 2015, the second day currently scheduled for hearing in this matter.

The motion for reconsideration and accompanying declarations contain previously undisclosed facts, inaccuracies, and inconsistencies that were weighed in considering this

motion. Mr. Leemhuis participated in a telephonic prehearing conference on Friday, February 13, 2015, during which these hearing dates were specifically selected. During that PHC, Mr. Leemhuis's paralegal, Mr. Peters, requested to continue the previously scheduled hearing dates, in part, due to a conflict with an ongoing hearing before OAH.

This ALJ, weighing that fact and Elk Grove's objection, granted a continuance to February 26, 2015, to permit Mr. Leemhuis time to conclude that hearing and allow one additional day to travel to northern California before starting this hearing. At no time during that PHC did Mr. Leemhuis or Mr. Peters inform this ALJ that Mr. Leemhuis had a conflicting court appearance previously scheduled for February 26, nor that Mr. Leemhuis, "never intended to make the February 26 appearance," at the due process hearing as stated in his declaration.

Mr. Leemhuis's declaration also incorrectly states that during the PHC, "Mr. Peters at [sic] request of the hearing officer took the lead in addressing the court." During the PHC, this ALJ did not request that Mr. Peters "take the lead" but instructed the parties to designate one speaker on Student's behalf. It was their decision and not this ALJ's that Mr. Peters be designated as the speaker. Regardless, neither Mr. Leemhuis nor Mr. Peters disclosed Mr. Leemhuis's conflict during the PHC.

Additionally, the declarations of Mr. Leemhuis and Mr. Peters contain conflicting information. Mr. Peters' declaration states that Mr. Leemhuis, "is not able to fly up to Sacramento and represent the client on Friday morning, on the 27th." Mr. Leemhuis's declaration, however, states only that he is unavailable on February 26, 2015, and nothing indicating he is unavailable on February 27, 2015.

Despite the forgoing, Mr. Leemhuis is not available to represent the Student in this matter on February 26, 2015. This ALJ is not going to hold Student responsible for the omission or actions of his attorney in failing to disclose this conflict earlier. Elk Grove, however, also has a right to proceed with the due process case it filed. The fact that Mr. Leemhuis *intended* for Mr. Peters to represent his client in this due process hearing and that Mr. Peters is not available does not obviate Mr. Leemhuis's responsibility as the attorney of record to represent his client in all matters related to the case.

After carefully considering the motion, declarations, and the case as a whole, the motion for reconsideration is granted. The motion to continue is granted as to Thursday, February 26, 2015 *only*. The due process hearing will commence on Friday, February 27, 2015. If the hearing is not concluded on that day, the ALJ will schedule additional days.

ORDER

1. The motion for reconsideration is granted.
2. The motion to continue is granted as to Thursday, February 26, 2015.

3. This matter will proceed at 9:30 a.m. on Friday, February 27, 2015.

IT IS SO ORDERED.

DATE: February 25, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings