

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2015020856

ORDER DENYING REQUEST FOR
RECONSIDERATION

This matter has been pending since February 18, 2015. The parties first asked for, and were granted, a continuance after an unsuccessful mediation on March 25, 2015. At that time, the parties requested and were granted hearing dates of April 29 and 30, 2015. At the Prehearing conference on April 17, 2015, both parties asked for and were granted continuances for good cause. Both parties asked that the matter be continued to September 2015 and that request was denied. The matter was set to begin on June 15, 2015.

On May 28, 2015, Sequoia made another motion to continue the case, general citing the unavailability of District witnesses during summer break and the planned vacation of the special education director for Sequoia beginning June 22, 2015. Student did not oppose this motion and the parties again asked for September 2015 hearing dates. This was considered both a motion for reconsideration and a motion to continue. At this time, Student only raised a conflict for Student and Parent based upon travel plans through September 4, 2015.

On May 29, 2015, the motion to reconsider was granted and the hearing was continued based upon the good cause shown of the special education directors planned vacation. The order specifically held that the general claim of summer break was not good cause for a continuance and that the matter would not be continued to September. The hearing was set for July 7-9, 2015 and July 14-15, 2015.

On June 3, 2015, Student filed yet another a request to continue the dates in this matter based upon the unavailability of Student and her parents the week of July 7, 2015 and because "many of Student's witnesses are not available during July or August due to varying vacation schedules." The attached declaration merely repeated these general statements and had no specifics included regarding the alleged vacations of many of Student's witnesses. Sequoia did not oppose the motion. Both parties have asked again that the hearing be set to begin on September 21, 2015 and estimate a six day hearing.

On June 10, 2015, Presiding Administrative Law Judge Margaret Broussard issued an order that parties granted the parties' joint continuance, but set hearing days for July 2015, and not September 2015, as requested. On June 15, 2015, the parties separately filed requests for reconsideration. Student asserts that she will not be available due to attending summer school and Mother will not be available to drive Student to summer school. Both parties also contend that District personnel will not be available due to vacations.

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

The parties do not allege new facts, circumstances, or law in support of the request for reconsideration that warrants a granting of a continuance until September 2015. Student's attendance in the summer class is not sufficient for reconsideration, and Student did not establish that her mother is the only means of transport. Further, neither party included any declaration from an unavailable witness. Student and District are reminded that the fact that District is on summer recess does not make a District employee unavailable or not

subject to be compelled hearing attendance through a subpoena. Accordingly, the parties' requests for reconsideration are denied.

DATE: June 16, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings