

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT.

OAH CaseNo. 2015050320

ORDER DENYING REQUESTS FOR
RECONSIDERATION AND DENYING
PARTIES THIRD AND FOURTH
REQUESTS FOR CONTINUANCE

On July 2, 2015, the undersigned Presiding Administrative Law Judge issued an order denying the parties second joint request for continuance. The parties had already requested, and been granted, a continuance of the initial hearing dates in this matter. At the time the parties requested the initial continuance, they asked the Office of Administrative Hearings to set the dates in the matter within 90 days of the initial hearing date, because the parties could not agree on continued dates. Neither party made any mention of any potential conflicts during the 90 day window in which they asked OAH to set the continued hearing dates.

OAH set the matter to begin on July 14, 2015. After OAH set the new hearing to begin on July 14, 2015, the parties sent OAH a second joint request for continuance, stating that “[D]istrict witnesses are not available during current hearing dates; District’s counsel is not available in August and Student’s counsel is not available in September. October 5 is the first week all parties/witnesses/counsel are available.” No declarations made under penalty of perjury accompanied the request and no specifics were given by the parties. The second request for continuance was denied.

After business hours on July 2, 2015, Susan Foley, attorney for Student, send in a letter which is being construed as both a motion to reconsider the denial of the second joint request for a continuance and a third request for a continuance. The letter explains that Ms. Foley will not be available from July 9, 2015 through the end of July because she must care for a loved one who is undergoing major surgery. Ms. Foley states in the letter that she was not the attorney of record when the first request for continuance was sought and that the surgical procedure was recently scheduled. The letter cites no law and is not accompanied by any declarations made under penalty of perjury.

On July 6, 2015, Melanie Seymour, attorney for San Mateo-Foster City School District, sent in a letter which is also being construed as a motion to reconsider the denial of the second joint request for continuance and a fourth request for continuance. This letter explains that San Mateo-Foster City’s special education director is out of state on vacation

from July 14-20, 2015, the school psychologist is on summer break and may not be available until school starts August 12, 2015, the resource specialist is on vacation from July 20-August 3, 2015, and that Ms. Seymour is out of the country from August 8-24, 2015 and in another hearing in front of OAH beginning August 24, 2015. The letter cites no law and is accompanied by only one declaration made under penalty of perjury, by the resource specialist.

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.)

To the extent that the letters can be considered motions for reconsideration of the July 2, 2015 order, the motions for reconsideration are denied. Neither party provided a declaration under penalty of perjury supporting new facts or circumstances showing why the motion for reconsideration should be granted. While Ms. Foley may have established good cause and did explain why her unavailability was not explained in the first request for continuance, all motions need to be accompanied by a declaration made under penalty of perjury. Ms. Seymour only attached a declaration for the resource specialist's unavailability later in the month of July, almost a week after the first day of hearing. Therefore, reconsideration is denied because the parties did not provide declarations under penalty of perjury to support a request for reconsideration.

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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Denied. All dates are confirmed. To the extent that the letters can be considered new requests for continuances, the parties generally failed to support the claims of unavailability with declarations made under penalty of perjury. Also, San Mateo-Foster City failed to follow the July 2, 2015 order, which required any further request for continuance to show specific good cause, including unavoidable unavailability that was unanticipated and unknown at the time the first request for continuance was made on May 30, 2015.” The parties are instructed that any further requests for continuance must show good cause, must be accompanied by declarations under penalty of perjury and must show unavoidable unavailability that was unanticipated and unknown at the time the first request for continuance was made on May 30, 2015. Should additional requests for continuances be filed in this matter, each party should also establish good cause for any unavailability claimed, up to the date requested for hearing, to support the request for continuance.

IT IS SO ORDERED.

DATE: July 7, 2015

/s/

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings