

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ORINDA UNION SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2018090025

ORDER GRANTING
RECONSIDERATION AND
PARTIALLY GRANTING AND
PARTIALLY DENYING REQUEST
FOR CONTINUANCE

On October 15, 2018, Student filed a second request to continue the dates in this matter, based upon a renewed claim of illness. On that same day OAH denied the request because it lacked a persuasive showing of good cause, and particularly because it lacked any information from a medical professional.

At 1:51 p.m. on October 15, 2018, Student moved for reconsideration of the denial of the second request for continuance, and supplied a note from a physician.

In light of the need of the parties and witnesses for certainty, the motion will be decided without delay.

APPLICABLE LAW

Motion for 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.)

Motion for 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).)

DISCUSSION

Reconsideration is appropriate because Student now presents medical information not earlier available. Student's motion contains a writing from Dr. Meera Jagannath of Kaiser Permanente stating that she met with Mother this morning. It adds that Mother "is placed off work from 10/15/2018 through 10/16/2018" but also that Mother "was evaluated and deemed able to return to work at full capacity on 10/17/2018."

The motion being reconsidered sought a continuance to October 23, 2018, but the medical information supplied in the motion to reconsider does not support a continuance of that length. There is a passing reference in the motion being reconsidered that a continuance "will allow time" for Mother to participate in the planning and preparation of this matter, but there is no forthright allegation that Student is unprepared to go to hearing. The information from Mother's physician suggests that Mother should be fully capable of beginning the hearing on October 17, 2018.

The motion for reconsideration is GRANTED. The reconsidered request for continuance is GRANTED in part and DENIED in part. The due process hearing herein shall be continued for one day. The hearing day of October 16, 2018, is vacated. The hearing will begin on October 17, 2018, at 9:30 a.m. and proceed on October 18, 2018, beginning at 9:00 a.m. On the second day of hearing, the parties shall be prepared to discuss possible further hearing days.

The parties shall immediately notify all potential witnesses of the change in hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: October 15, 2018

DocuSigned by:

Charles Marson

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CHARLES MARSON

Administrative Law Judge

Office of Administrative Hearings