

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TUOLUMNE COUNTY
SUPERINTENDENT OF SCHOOLS AND
CURTIS CREEK ELEMENTARY
SCHOOL DISTRICT.

OAH Case No. 2019020281

ORDER GRANTING MOTION FOR
RECONSIDERATION AND DENYING
REQUEST FOR CONTINUANCE

On February 27, 2019 Tuolumne County Superintendent of Schools and Curtis Creek Elementary School District filed a request to continue the dates in this matter with the Office of Administrative Hearings, based upon a preplanned, prepaid vacation for counsel Marcella Gutierrez. On March 5, 2019, the undersigned ALJ denied Tuolumne and Curtis Creek's request for continuance on the grounds that the unavailability of one of Tuolumne and Curtis Creek's co-counsel is not good cause for a continuance. On March 7, 2019, counsel for Tuolumne and Curtis Creek's filed a motion for reconsideration asserting new facts that Marcella Gutierrez was designated by Tuolumne and Curtis Creek to represent them at the due process hearing. On March 7, 2019, Student filed an opposition to Tuolumne and Curtis Creek's motion for reconsideration.

Reconsideration

The Office of Administrative Hearings (OAH) 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.)

In Tuolumne and Curtis Creek's motion for reconsideration, a sworn declaration was produced from SELPA director Blaine Cowick identifying Ms. Gutierrez as lead counsel for the upcoming due process matter on calendar. Accordingly, Tuolumne and Curtis Creek's motion for reconsideration is granted.

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).)

In the instant case, Student initially filed for Due Process on January 4, 2019. Tuolumne and Curtis Creek filed for due process on February 6, 2019. The cases were consolidated on February 11, 2019 and the 45-day timeline for issuance of decision was based on Tuolumne and Curtis Creek's filing. On February 22, 2019, Tuolumne and Curtis Creek filed a motion to amend which was granted during the prehearing conference held that day. When the motion to amend was granted, by operation of law, this reset the hearing dates. Counsel for Tuolumne and Curtis Creek knew of her unavailability at the time she filed the motion to amend. As an experienced practitioner before OAH, she had reason to know that hearing dates would likely fall during her period of unavailability. While sympathetic to counsel's vacation conundrum, the fact remains, her unavailability does not rise to good cause as it remains a problem of counsel's own creation. Additionally, despite the declaration appointing Ms. Gutierrez as lead counsel, it is Mr. Heyer, co-counsel who has signed nearly all pleadings filed in this case. He was identified in the notice of representation filed in this case and as asserted no unavailability.

ORDER

1. Tuolumne and Curtis Creek's Motion for reconsideration is granted.
2. Tuolumne and Curtis Creek's motion for continuance is denied. All dates remain on calendar.

IT IS SO ORDERED.

DATE: March 8, 2019

DocuSigned by:
Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings