

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

THE LANGUAGE ACADEMY OF
SACRAMENTO.

OAH Case No. 2018110512

ORDER GRANTING REQUEST FOR
RECONSIDERATION, GRANTING
CONTINUANCE, AND DENYING
REQUEST FOR MEDIATION DATE

On March 20, 2019, the undersigned administrative law judge issued an order that denied the parties joint request for a third mediation date and a hearing continuance. On March 26, 2019, the parties jointly filed a motion for reconsideration.

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. (34 C.F.R. § 300.515(a); Ed.Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

DISCUSSION

Reconsideration

The parties allege new circumstances and a declaration in support of their request for reconsideration. The declaration sets forth specific facts concerning their ability to complete two assessments, and their efforts and inability to complete one assessment before the second scheduled mediation date of March 12, 2019. Counsel further submitted that an unforeseen fourth assessment was initiated and completed in March 2019, and needed to be considered prior to the conclusion of this matter. As a result, reconsideration is granted.

Continuance

Based upon the submitted declaration detailing the steps taken to secure an assessor in the preceding 90 days, good cause is found to continue the hearing in this matter.

Mediation

A request for an initial mediation is generally good cause for a continuance; multiple mediations are not guaranteed. In this case, however, OAH found good cause to grant a second mediation to March 12, 2019, in order for the parties to conduct assessments pursuant to a December 2018 interim settlement agreement.

On March 11, 2019, after 4:00 p.m., the parties canceled the mediation scheduled for the next day, explaining that the parties were not in a position to effectively negotiate a settlement because they only recently found an assessor. While the parties set forth detailed information regarding efforts to secure an assessor in the preceding 90 days, they failed to provide any explanation as to why they waited on the eve of mediation to cancel it. The parties own declaration suggests that they could have contacted OAH earlier. Thus, the request for a second mediation date is denied.

ORDER

1. The motion for reconsideration is GRANTED.
2. The request for a due process hearing continuance is GRANTED.
3. The current prehearing conference and due process hearing dates are vacated.
4. The prehearing conference is set for April 26, 2019, at 3:00 p.m.
5. The due process hearing is set for May 7, 2019, at 9:30 a.m., and May 8 and 9, 2019, at 9:00 a.m., and continuing day to day at the discretion of the administrative law judge.

6. The request for mediation is DENIED.

IT IS SO ORDERED.

DATE: March 27, 2019

DocuSigned by:
Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings