

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT.
OAH CASE NUMBER 2021070856

ORDER FOLLOWING PREHEARING CONFERENCE FOR
HEARING BY VIDEOCONFERENCE; DENYING MOTION FOR
RECONSIDERATION FOR ORDER DENYING MOTION TO
AMEND; GRANTING MOTION FOR RECONSIDERATION
FOR ORDER DENYING REQUEST FOR CONTINUANCE;
GRANTING REQUEST FOR CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND DUE PROCESS HEARING

JANUARY 7, 2022

On January 7, 2022, Administrative Law Judge Paul H. Kamoroff, Office of
Administrative Hearings, held a prehearing conference by videoconference. The

Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Attorney Diana Maltz appeared on behalf of Parent and Student. Attorney Jonathan P. Read appeared on behalf of Etiwanda School District. The PHC was recorded. During the PHC, the parties discussed pending prehearing motions, including Student's motion for reconsideration, Student's motion to consolidate, and Etiwanda's motion to dismiss issues. Student's motion to consolidate and Etiwanda's motion to dismiss issues will be addressed by separate orders.

Based upon discussion with the parties, the ALJ issues the following order:

MOTIONS FOR RECONSIDERATION

AMENDED COMPLAINT

On January 4, 2022, OAH issued an order denying Student's request to amend his complaint. On January 5, 2022, OAH issued an order denying Student's request for continuance. On January 6, 2022, Student filed a motion for reconsideration for both orders. Etiwanda did not oppose the motion.

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, generally within ten days. (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.)

Student failed to present new or different facts, circumstances, or law justifying reconsideration of OAH's order denying Student's motion to amend. Reconsideration for this order is therefore denied.

CONTINUANCE REQUEST

Student did present new facts and circumstances regarding his request to continue, including a declaration by Student's attorney that she is not available during the presently set hearing dates. Student also plead new facts that show Parents are not available during the hearing dates. Consequently, Student's motion for reconsideration for OAH's order denying the request for continuance is granted.

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. (Ed. Code, § 56505, subd. (f)(3); 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 or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

Here, Student established good cause for a continuance and the request is granted. All hearing dates are vacated. The hearing will be set as follows:

PREHEARING CONFERENCE will be held by videoconference on February 25, 2022, at 3:00 PM.

DUE PROCESS HEARING will be held by videoconference on March 8, 2022, through March 10, 2022.

PARTICIPANT INFORMATION SHEETS FOR MEDIATION AND PREHEARING CONFERENCES MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not timely filed.

IT IS SO ORDERED.


Paul H. Kamoroff (Jan 10, 2022 12:03 PST)

Paul H Kamoroff
Administrative Law Judge
Office of Administrative Hearings