

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024050096

ORDER GRANTING REQUEST FOR RECONSIDERATION,
SETTING PREHEARING CONFERENCE, AND CONTINUING

DUE PROCESS HEARING

JUNE 28, 2024

On June 14, 2024, the undersigned Administrative Law Judge issued an order granting Student's June 13, 2024 request for continuance of the due process hearing and an order to show cause as to why Student's counsel should not be sanctioned.

Stockton Unified School District, called Stockton, did not file a response to Student's June 13, 2024 request for continuance, prior to noon on June 14, 2024, per OAH's order on June 13, 2024. Stockton did file a response to Student's June 13, 2024 request for continuance at 4:24 PM on June 14, 2024, which was not received by the undersigned in time to be considered prior to issuing the June 14, 2024 Order.

On June 20, 2024, the undersigned issued an order setting a hearing for June 28, 2024 on the Order to Show Cause, and to reconsider, on the undersigned's own motion, the portion of the June 14, 2024 Order which granted Student's request for continuance.

On June 20, 2024, following the issuance of the undersigned's order setting the hearing described above, Stockton filed a motion for reconsideration of the portion of the undersigned's June 14, 2024 Order granting Student's request for continuance. The Office of Administrative Hearings, called OAH, did not receive a response from Student. Stockton's request for reconsideration was addressed concurrently with the undersigned's motion to reconsider the June 14, 2024 Order during the June 28, 2024 hearing.

During the June 28, 2024 hearing, Student orally moved to strike Stockton's untimely June 14, 2024 response to Student's June 13, 2024 motion to continue. That motion to strike is denied.

APPLICABLE LAW

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, 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.)

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due

process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, or other excusable circumstances;
- A party is unavailable because of death, illness, or other excusable circumstances;
- A party's attorney is unavailable because of death, illness, or other excusable circumstances;
- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice;
- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a reasonable opportunity to prepare for trial regarding the new party's involvement;
- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

DISCUSSION

Stockton timely offers new facts and circumstances to support reconsideration. In its June 14, 2024 response to Student's motion to continue, as well as its June 20, 2024 request for reconsideration, Stockton demonstrated good cause to continue the due process hearing to August 13, through 15, 2024. During the June 28, 2024 hearing, Student did not oppose the continuance. Given the totality of the circumstances, the motion for reconsideration is granted.

ORDER

On reconsideration, the dates previously set for the due process hearing are vacated. This Order also sets a new videoconference prehearing conference. This matter will proceed as follows:

PREHEARING CONFERENCE will be held on August 2, 2024, at 10:00 AM

DUE PROCESS HEARING will be held on August 13, through 15, 2024.

The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, Mondays and Fridays included, 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 the document was not timely filed.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses, if necessary, to ensure their availability to testify.

Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi

Administrative Law Judge

Office of Administrative Hearings