BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. GARDEN GROVE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2019040332
GARDEN GROVE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019040020 ORDER DENYING REQUEST FOR RECONSIDERATION

On June 10, 2019, Administrative Law Judge issued an order granting the parties joint request for a continuance of the Due Process Hearing to allow for settlement negotiations and to allow for Parent to file a Prehearing Conference Statement. On June 12, 2019, Parent filed a request for reconsideration, as she wanted the hearing to proceed on June 18, 19, and 20, 2019. Garden Grove Unified did not file an opposition to the request.

Procedural background

Student filed a Due Process Request on April 8, 2019. On March 29, 2019, Garden Grove Unified filed a Due Process Complaint. On April 12, 2019, Garden Grove filed a motion to consolidate the two matters.

A Prehearing Conference was held on April 15, 2019. Garden Grove Unified's motion to consolidate was granted at the Prehearing Conference. Parent stated in writing and on the record that she did not oppose the consolidation. Student's case became the primary case.

On April 23, 2019, Student's request to amend his due process request was granted. The scheduling order set the Prehearing conference for June 10, 2019 and set the Due Process Hearing for June 18, 19, and 20, 2019.

OAH gave the parties notice of the procedural requirements to be followed. On April 8 and April 23, 2019, OAH served the parties with a Scheduling Order and a Mediation and Due Process Packet. It explained that each party is required to submit a Prehearing Conference Statement at least three business days before the PHC. It stated that the Prehearing Conference Statement must contain a time estimate for hearing, a concise statement of the issues, a list of potential witnesses to be called, a summary of the witness testimony, a list of experts, and a list of documentary evidence to be introduced at trial. Documentary evidence must be exchanged at least five business days before hearing, or failure to do so may result in the exclusion of documents and witnesses.

On April 25, 2019, Student filed a withdrawal of Due Process Complaint number 2019040332. On April 26, 2019, Student filed a request to re-open the case because she thought by dismissing her case it would also dismiss Garden Grove Unified's case, and she realized she was mistaken. On April 30, 2019, the parties joint request for a mediation was granted. The mediation was held but the case did not settle.

On June 5, 2019, Garden Grove Unified filed a 25-page Prehearing conference statement for the consolidated matters. Parent did not file a Prehearing conference statement at any time.

At the June 10, 2019 Prehearing Conference, Parent appeared telephonically but was not prepared to discuss the case. Parent did not file a Prehearing Conference Statement. Parent stated she did not know she was required to file a Prehearing Conference Statement. Parent stated on the record she did not read Garden Grove Unified's Prehearing Conference Statement, even though it had been timely served on her. Counsel for Garden Grove requested a continuance of the due process hearing dates to allow more time to settle the matter, and to give Parent more time to prepare for the hearing and complete a Prehearing Conference Statement. Counsel for Garden Grove stated the parties were working on settling the case. Counsel also wanted Parent to have more time to prepare her case. Parent seemed confused and did not understand the effect of not complying with the procedural safeguards giving timely notice of the issues, witnesses, and exhibits to Garden Grove Unified. The ALJ explained the parties had to comply and file a Prehearing Conference Statement and exchange witness and exhibit lists, or they could potentially be precluded from introducing evidence at the hearing. The ALJ commented it would be better for Parent to have the additional time to file a Prehearing Conference Statement and prepare for the hearing, and to settle the case. Parent agreed to the continuance request, and then agreed it was a joint request. Two days later, Parent changed her mind and filed the subject request 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.)

The California Education Code section 56505 sets forth the procedural requirements OAH must ensure for all parties involved in a due process hearing. Section 56505(e)(6) states that at least 10 days prior to the hearing, all parties have the right to be informed by the other parties what they allege are the issues and proposed resolutions to be decided at the hearing.

DISCUSSION

Reconsideration

At the time of the June 10, 2019 Prehearing Conference, the Due Process Hearing date had been scheduled to start on June 18, 2019. Parent should have given Garden Grove Unified a Prehearing Conference Statement three business days before the Prehearing conference on June 5, but she did not. At the very least, Parent should have provided Garden Grove Unified with a statement of issues and proposed resolutions by June 8, 2019, ten days before the Due Process Hearing was scheduled to start, but she did not. During the June 10, 2019 Prehearing Conference, Parent should have been prepared to discuss the issues, proposed resolutions, proposed witnesses and exhibits, but she was not prepared. She had not read Garden Grove Unified's Prehearing Conference Statement.

Parent alleges no new facts, circumstances, or law in support of the request reconsideration. Parent's motion is not accompanied by a sworn declaration. Parent did not file a Prehearing statement to cure the defect of her non-compliance with the Education Code. Parent did not properly explain why her request for continuance should be rescinded, and why the hearing should go forward when she did not comply with the procedural safeguards set forth in the Education Code, in effect denying the other party the right to be timely informed of the issues and proposed resolutions involved, the witnesses to be called, and the exhibits to be introduced.

ORDER

Student's Request for Reconsideration is Denied.

IT IS SO ORDERED.

DATE: June 18, 2019

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Deborah Myers-Cregar
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DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings