BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SANTA ROSA CITY SCHOOLS And WEST SONOMA COUNTY UNION HIGH SCHOOL DISTRICT.	OAH CASE NO. 2013030058 ORDER GRANTING REQUEST FOR RECONSIDERATION AND REQUEST TO ADVANCE HEARING,AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On May 17, 2013, the undersigned Administrative Law Judge (ALJ) granted an unopposed request for continuance filed by Student's attorney, Peter Sturges, and continued the due process hearing in this matter to August 20, 2013. On June 3, 2013, the West Sonoma County Union High School District and Santa Rosa City Schools (collectively referred to as the Districts) filed a request to continue the August 20, 2013 hearing date to a later date. That request for continuance was deemed to be a request for reconsideration of the ALJ's order of May 17, 2013, and was denied on June 12, 2013, by the ALJ.

On June 12, 2013, the Office of Administrative Hearings (OAH) also received a letter from Student himself, not Mr. Sturges, opposing the Districts' request for continuance, and asking OAH to reschedule the August 20, 2013 hearing to an earlier date in August. Student's June 12, 2013 letter, is deemed a request for reconsideration of this ALJ's May 17, 2013 order, and a request to advance the hearing.

On June 19, 2013, the Districts filed an opposition to Student's request to advance the hearing. On that same date, concerned that Student was filing pleadings on his own behalf, although he was represented by counsel, this ALJ ordered that Student provide additional information as to why he was filing pleadings on his own behalf. On June 21, 2013, Student himself filed a response to the Districts' opposition; and on June 25, 2013, he filed a response to the request for additional information.

On June 28, 2013, after business hours, Parent sent OAH several documents that appeared to be privileged communications. On July 1, 2013, another OAH ALJ ordered these forwarded to Student's attorney, and copies of the documents sealed in OAH's file. Student and Parent were admonished about sending pleadings and other correspondence to OAH when represented by counsel. On July 1, 2013, before this order had been issued by OAH, Student's attorney filed a motion to be relieved as counsel for him. [1]

[1] This motion was granted in a separate order.

APPLICABLE LAW

Reconsideration

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.)

Motion to Advance

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. However, continuance or advancement of a hearing may be granted for good cause. 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 or advancement 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 or advancement; 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).)

DISCUSSION

Reconsideration

Student requested the continuance ordered May 17, 2013, based on the serious illness of a member of Student's family. In his request to advance the hearing to a date in early August 2013, Student alleged new facts: 1) The family member who was ill had recently died, so a continuance was no longer necessary; and 2) Student was planning to attend community college, and classes were to begin on August 19, 2013, and Student did not want

to miss classes due to the due process hearing. Based on these new facts, Student's motion for reconsideration is granted.

Motion to Advance

Student has presented good cause for advancing the hearing. [2] The Districts argue that a school's schedule should not be considered when deciding whether or not to grant a request to change a hearing date. Because of this, the ALJ denied the Districts' motion to continue the case on the ground that vacations or breaks when school was not in session, and school employees are not readily available, is not good cause to continue a case. However, the situation is different when the Student is asking for a new date for hearing because he will miss classes. This is analogous to a situation where a student is excused from jury duty. (*People v. Tate* (2010) 49 Cal.4th 635, 660-665; Uniform Local Rules for Third Appellate District Superior Courts, rule 5.5, subd. (d)(7).) Accordingly, good cause is found to advance this case, and this matter shall proceed as follows:

All dates are vacated. This matter will be set as follows:

Prehearing Conference:	July 29, 2013, at 10:00 a.m.
Due Process Hearing:	August 6, 2013 at 9:30 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

Dated: July 12, 2013

/s/
REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

[2] The advancement of the hearing will not change the current timeline for issuing a decision.