BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

ANAHEIM ELEMENTARY SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2020090678

ORDER GRANTING REQUEST FOR CONTINUANCE AND DENYING STUDENT'S REQUEST FOR RECONSIDERATION

OCTOBER 5, 2020

On October 2, 2020, the undersigned Administrative Law Judge, referred to as ALJ, granted Student's request to reschedule the prehearing conference based on Parent's illness. Student represented that he and Parent were on antibiotics and steroids, and the medication would hinder Parent's ability to meaningfully participate in the prehearing conference. The prehearing conference was rescheduled to October 5, 2020, at 3:00 PM. The ALJ denied Student's request for a continuance based on a need for Parent and Student of an accommodation under the Americans with Disabilities Act (41 U.S.C. §§ 1201, et seq.).

On October 5, 2020, Parents on behalf of Student filed with the Office of Administrative Hearings, referred to as OAH, a request for reconsideration of the October 2, 2020 Order, and again requested to reschedule the prehearing conference and continue the due process hearing due to Parent's illness. In his request for a continuance and reconsideration, Student attached a photo of a prescription bottle for antibiotics, prescribing Parent to take the antibiotics for 10 days. Anaheim Elementary School District filed an objection on October 5, 2020.

REQUEST FOR CONTINUANCE

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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request for a continuance is granted. Student established good cause for a brief continuance to allow Parent to recuperate from his temporary illness to permit him to participate in the prehearing conference and due process hearing. No further continuance shall be granted unless a showing of exceptional circumstances supported by declaration and medical documentation necessitating a continuance of the matter.

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

Prehearing conference will be held on October 12, 2020, at 3:00 PM. The prehearing conference will be held by videoconference or telephone. Anaheim Elementary filed a prehearing conference statement and is not required to file another statement unless changed circumstances warrant it. Prehearing conference motions shall be filed no later October 7, 2020 or with evidence of good cause why it was not possible to file the motion by that date. Student must file a prehearing conference no later than October 7, 2020. Parent's illness has not impeded his ability to prepare and file motions, and therefore, his illness should not impede his ability to file a timely prehearing conference statement.

Due Process Hearing will be held on October 21 and 22, 2020. The hearing will occur by videoconference. 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 ALJ.

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.

REQUEST FOR 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, 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.)

Here, Student's request for reconsideration of the October 2, 2020 Order denying a continuance based on a need for an accommodation under the Americans with Disabilities Act fails to offer new or different facts, circumstances, or law justifying reconsideration. Accordingly, the request for reconsideration is denied.

IT IS SO ORDERED.

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Rommel P. Cruz
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Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings