BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017111068
v.	ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING CONTINUANCE OF HEARING
SCOTTS VALLEY UNIFIED SCHOOL DISTRICT.	

On February 16, 2018, the undersigned administrative law judge issued an order following Prehearing Conference that included a denial of a motion for continuance of the hearing currently scheduled to begin February 27, 2018, on the grounds that the parties did not establish good cause for a continuance to May 8, 2018. That order was issued without prejudice to the parties filing a further motion to establish grounds for such an extensive continuance of the hearing. On February 16, 2018, the parties jointly filed a request for reconsideration of the order denying the request for continuance.

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.)

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; (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 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 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

Request for Reconsideration

New information, specifically a declaration from Father describing his unavailability from March 26, 2018 to April 17, 2018, was submitted with the motion for reconsideration. Therefore, the motion for reconsideration is granted.

Motion for Continuance

This is the parties' second request for continuance. During the course of the prehearing conference, the parties did not establish the need for a continuance to May 8, 2018. This motion for reconsideration also fails to establish grounds for such an extensive continuance. The request for reconsideration is accompanied by declarations from Richard Ruderman, who appeared for designated hearing counsel Christian Knox at the prehearing conference; Student's Father; and from Jennifer Nix, counsel for Scott's Valley. Student's father has established that he has a work conflict between March 26, 2018 and April 17, 2018.

Ms. Nix has not established a conflict. An amended complaint was filed on February 14, 2018, in the case which she asserts creates a conflict (2017061192.) Therefore, no conflict now exists, as the dates previously set in that matter will be vacated and a new hearing date set. Ms. Nix's declaration did not identify any other cause for continuance of the case.

Mr. Ruderman submitted a declaration regarding Ms. Knox's calendar citing other cases set for the weeks of March 13, 2018 and March 20, 2018, acknowledging that Ms. Knox had multiple cases set for those weeks. The declaration was not from Ms. Knox, however, and did not include any specific facts establishing whether the other cases on her calendar had previously been granted continuances, whether those cases had already been the subject of prehearing conferences or whether there was information indicating they would likely proceed to hearing.

The parties argue that they agree to the continuance and that the case is primarily about reimbursement for placement and that, as Student is currently privately placed, there is no prejudice resulting from the delay. However, the complaint raises many issues in addition to the question of placement.

It is common for attorneys to have multiple cases scheduled for hearing in the same week as so many special education cases settle very near to trial. While the parties agree to the extensive continuance, a stipulation does not constitute good cause for a continuance. A basic tenet of the IDEA is speedy resolution of a student's special education and related service needs. Every continuance delays the determination of Student's educational program; therefore, continuances, and particularly extensive continuances are disfavored. Good cause for an additional continuance has been established. However, good cause for a continuance to May 8, 2018 has not been established. Based on the new information provided, the hearing is continued to March 20, 2018.

ORDER

1. Motion for Reconsideration is Granted.

2. Based on a reconsideration of the parties' joint request for continuance of the February 27, 2018 hearing dates, and an evaluation of the evidence provided, the continuance is GRANTED. The case is continued to March 20, 2018, at 9:30 a.m., continuing on March 21 and 22, 2018 at 9:00 a.m.; then continuing day to day thereafter at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DATE: February 21, 2018

DocuSigned by:
Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings