

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014051179

ORDER DENYING REQUEST FOR
RECONSIDERATION; GRANTING
REQUEST FOR CONTINUANCE AND
SETTING MEDIATION, PREHEARING
CONFERENCE AND DUE PROCESS
HEARING

On June 20, 2014, the undersigned denied separate requests for continuances from both parties in this matter. On June 23, 2014, Student filed a request for reconsideration. On June 26, 2014, the Newport-Mesa Unified School District (Newport-Mesa) filed an opposition.

On June 26, 2014, Newport-Mesa filed its own request for reconsideration of the June 20, 2014 order. As Newport-Mesa's request is denied, the Office of Administrative Hearings need not wait for a response from Student.

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.)

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. (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 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 AND ORDER

Reconsideration

Newport-Mesa's contention is that a conflicting hearing in OAH Case No. 2014051060 is set to begin on July 15, 2014, and that this constitutes new facts sufficient for reconsideration. In support of its contention, Newport-Mesa has submitted a sworn declaration from Maureen Cottrell, its director of special education. Newport-Mesa's contention fails for two reasons. First, the hearing date of July 15, 2014, set in OAH Case No. 2014051060 was already known to Newport-Mesa when it filed the original request for continuance in this matter, as the scheduling order in that matter was issued on May 27, 2014. Second, there is no actual conflict, as OAH continued Case No. 2014051060 by an order dated June 20, 2014.¹ Accordingly, Newport-Mesa's request for reconsideration is denied.

Student's request for reconsideration similarly contains no new facts, law or circumstance. Accordingly, Student's request for reconsideration is also denied.

Continuance

Student's June 18, 2014 request to continue was denied as Student's counsel had failed to provide sufficient information regarding his unavailability to establish good cause. The request for reconsideration contains no new facts, law or circumstances, not previously available to Student. However, it does contain additional information regarding

¹ The order continuing OAH Case No. 2014051060 was served upon Newport-Mesa's counsel prior to Newport-Mesa filing the June 26, 2014 reconsideration request in this matter. As such, this is an attempt to mislead OAH by either Newport-Mesa, its counsel, or both. While Newport-Mesa is represented in the other matter by a different law firm, it is the responsibility of its counsel in this matter, Adam Newman, to investigate facts before making false representations to this tribunal. An Order to Show Cause as to why Newport-Mesa should not be sanctioned or ordered to pay costs shall issue separately.

unavailability of Student's counsel and is therefore treated as a renewed request for continuance. Student's counsel is cautioned that vague assertions of unavailability are not sufficient to establish good cause for continuances.

Having considered the parties' pleadings, evidence and contentions, a continuance is granted. All dates are vacated. This matter will be set as follows:

Mediation:	July 8, 2014, at 9:30 AM (either party may cancel)
Prehearing Conference:	September 5, 2014, at 10:00 AM
Due Process Hearing:	September 16, 2014, at 9:30 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DATE: June 27, 2014

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings