

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RED BLUFF UNION ELEMENTARY  
SCHOOL DISTRICT ANTELOPE  
ELEMENTARY SCHOOL DISTRICT,  
TEHAMA COUNTY MENTAL HEALTH  
and TEHAMA COUNTY DEPARTMENT  
OF EDUCATION.

OAH CASE NO. 2011031548

ORDER GRANTING MOTION FOR  
RECONSIDERATION, AND SETTING  
NEW DATES

On April 20, 2011, the undersigned administrative law judge (ALJ) drafted an order granting Antelope Elementary School District's (Antelope) request for a continuance in this matter, and continued the due process hearing from May 24, 2011, to June 28, 2011, with a prehearing conference (PHC) set for June 15, 2011. The ALJ then sent a request for Office of Administrative Hearings (OAH) staff to issue the order. OAH staff issued the order granting Antelope's request for continuance on April 21, 2011.

On April 22, 2011, Student filed a motion for reconsideration. On the same date, Antelope filed an opposition to a request Student sent to OAH on April 20, 2011, to keep the hearing date of May 24, 2011, and add additional days. The other parties, Red Bluff Union Elementary School District (Red Bluff), and Tehama County Department of Education (TCDE) have since filed responses or oppositions to Student's motion for reconsideration. Tehama County Mental Health (TCMH) has not filed a response to any filings other than the initial request for due process filed by Student.

APPLICABLE LAW

The 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.)

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. (34 C.F.R. § 300.515(a) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

## DISCUSSION

Student has alleged new facts that the ALJ was unaware of when Antelope's request for continuance was granted. Shortly before the ALJ sent the request for staff to issue the order granting the continuance, Student faxed a letter requesting additional days for hearing, and asking that the hearing date of May 24, 2011, be maintained. Due to the timing of the filing of Student's opposition, the process through which documents are entered into OAH's system, and the manner in which orders are issued, the ALJ was unaware of Student's opposition prior to the issuance of the order. The ALJ did not see Student's letter until after the motion for reconsideration was received. Had the ALJ seen Student's letter before the order was issued, it would have been considered as opposition to the motion to continue, and she would have asked OAH staff to suspend issuance of the order granting a continuance, and reconsidered the previously drafted order.<sup>1</sup>

On reconsideration, because Antelope's motion to continue was opposed by one of the parties, and grounds for a continuance were not provided, the motion should not have been granted. Accordingly, Student's request for reconsideration is granted.<sup>2</sup> The District's motion for continuance is denied. All dates set in the order of April 22, 2011, are vacated.

In their responses to Student's request for reconsideration, the other parties, with the exception of TCMH, have provided OAH with pleadings that contain dates that counsel or parties are not available for a due process hearing. Antelope's attorney is not available May 23-25, 2011. Red Bluff's attorney is not available June 1-3, 2011, and June 27-30. TCDE

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<sup>1</sup> Although some parties contacted the OAH staff and were informed that Student's request was considered to be a separate pleading, and not an opposition to Antelope's request for continuance, an ALJ is ultimately responsible for classifying a pleading.

<sup>2</sup> TCDE argues that Student's opposition to Antelope's request for continuance was not timely filed. OAH's policy of granting parties three business days to respond to motions is designed to provide guidance to the special education community and to assist OAH in the timely disposition of pending matters. Generally, if a party files a response prior to the issuance of an order, it will be considered, regardless of whether it is filed within three business days after the filing of the motion.

and its attorney are not available for hearing on May 24, 2011. Since the parties have been unable to agree on dates for the due process hearing, new dates will be set for the PHC and due process hearing by the ALJ, based on the parties' stated availability.

#### ORDER

1. Student's motion for reconsideration of the order granting Antelope's request for continuance is granted.
2. Antelope's request for continuance is denied.
3. The PHC shall be held on June 6, 2011, at 1:30 p.m.
4. The due process hearing shall be set for June 13-16, and June 20-21, 2011.

IT IS SO ORDERED.

Dated: May 3, 2011

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