

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011090491

ORDER GRANTING MOTION FOR
RECONSIDERATION, AND
REQUEST FOR CONTINUANCE AND
SETTING DUE PROCESS HEARING

On February 22, 2012, a prehearing conference (PHC) was held in this matter before Administrative Law Judge (ALJ) Gary A. Geren. During those proceedings Student made a motion to continue the hearing so that it would not be held on consecutive days, but rather would be held on February 27, 2012, and days to be determined through discussion on the record. The undersigned presided over the motion to continue, which is discussed in greater detail below. The undersigned issued an oral ruling granting Student's request to continue and setting this matter for hearing on February 27, 2012, and March 26 – 30, 2012.¹

On February 24, 2012, the Dry Creek Joint Elementary School District (District) filed a motion for reconsideration of the undersigned's order. Because of the pending due process hearing on February 27, 2012, the Office of Administrative Hearings (OAH) contacted the parties to set a status conference for 3:00 p.m. on February 24, 2012. Father initially told staff that he was unsure if he wanted to participate and would let OAH know. Father then informed OAH that he would participate, but was uncomfortable that Mother could not participate. OAH staff offered to include Mother in the teleconference, but Father declined. Subsequently, Father informed OAH that Parents would not be participating.

At 3:00 p.m. on February 24, 2012, the undersigned initiated the teleconference for the status conference. The undersigned called Father at his work, the only phone number provided by Father for the status conference.² After being placed on hold, the undersigned was informed that Father was not available. The undersigned left Father a detailed message and provided him with instructions on how he could participate if he changed his mind. At the start of the conference District's counsel stated that she had email communications with Father and he had informed her that he would be handling work matters from 2:15 p.m.

¹ The motion and ruling were set forth in an Oder Following Prehearing Conference by ALJ Geren on February 24, 2012.

² This is the phone number to a law firm, at which Father is an attorney.

onwards. All of this was put on the record in the status conference. Student did file a written opposition to District's motions which was considered by the undersigned.

APPLICABLE LAW

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); 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

Reconsideration

District contends that its counsel was unaware at the time of the February 22, 2012 PHC that it was on holiday during the week of March 26, 2012, and would not return from holiday until April 9, 2012. Had counsel know this, District would not have agreed to these dates if Student's continuance request was to be granted. Student contends that because OAH did not initially set any dates beyond February 27, 2012, and neither side requested a continuance of that date, any further dates set by the undersigned were merely assignment of further dates and not a continuance granted out of a motion. Therefore, because there was no motion, there cannot be a right to reconsideration.

Student's position is not persuasive. OAH set this matter for one day of hearing, but it is up to the parties to inform OAH of how many days the parties think the matter will actually take and what their availability is. Both parties filed PHC statements indicating the matter would take four days, however, neither party indicated any conflicts with any particular date. In such circumstances, OAH assumes that a matter will continue day-to-day until completed. OAH is under strict time lines to issue decisions under the Individuals with Disabilities Education Act (IDEA), unless a continuance is granted. Therefore, to assume that due process hearing matters can be set sporadically with dates of hearing spread out over

a month, without continuances, would be in violation of the strict time lines set out by the IDEA. Therefore, when Student, for the first time at the PHC, indicated that he was not prepared to go forward for four consecutive days beginning on February 27, 2012, this was a motion to continue the dates of February 28, 2012, onwards. Accordingly, District does have a right to file a motion for reconsideration.

Next, with respect to the motion to reconsider, immediately following the PHC, District's counsel learned of District's unavailability. On February 22, 2012, District notified OAH and Student of the error in stating that it was available the week of March 26, 2012, and requested a status conference. On February 24, 2012, District filed the instant motion. The evidence establishes that District's counsel was unprepared for Student's motion at the PHC and could not have reasonably ascertained District's availability prior to the PHC. Furthermore, District did not have a representative participating in the PHC. Accordingly, District established that there are new facts, and the motion to reconsider is granted. However, it is limited only to the issue of setting new dates and not to whether Student's continuance request should have been granted on February 22, 2012.³

Continuance

There are two separate continuance issues here. First, there is the continuance of the dates of March 26 – 30, 2012, which stems from the motion to reconsider. Second, District moved to vacate and continue the currently set hearing date of February 27, 2012, as well and seeks consecutive dates. This is the first time that either party has moved to continue February 27, 2012.

Student contends that he is prepared to move forward on February 27, 2012, and that any continuance of March 26 – 30, 2012, would affect expert witnesses and family daycare issues for Parents. In particular, Student has provided information regarding Dr. Simun who typically has a calendar that is set four to six weeks ahead. Student did provide dates when Parents are available to hold consecutive days of hearing.

With respect to the continuance of February 27, 2012, it will promote judicial economy and conserve judicial resources to have this matter heard in one set of consecutive days. Accordingly, that motion is granted.

With respect to the request to continue March 26 – 30, 2012, OAH typically does not grant continuances due to school district holidays. The IDEA makes no provision to suspend the hearing time lines during school holidays. However, because the dates of March 26 – 30,

³ District also moved for reconsideration/continuance on the grounds that it may require additional time to obtain records through subpoenas based upon evidence presented in Student's evidence binder. While the undersigned summarized the parties' position on this issue on the record, this order will not address any issues concerning subpoenas or evidence. Those matters shall be handled, if appropriately raised, through other motions either prior to, or at the hearing.

2012, came out of Student's request for a continuance, the undersigned will give equitable consideration to District's schedule, in this instance. Furthermore, as the record in this matter will establish Parents have previously moved to continue this matter until June 2012, in order to obtain legal representation. On February 22, 2012, one reason Student sought a continuance of February 228, 2012, was because Parents were meeting with potential counsel. Therefore, District's motion is granted on equitable grounds and it will further provide Student additional time to obtain legal counsel. The undersigned has chosen dates provided by Parents, over District's objection.

ORDER

1. District's motion for reconsideration is granted for the limited purpose of considering a continuance of March 26 – 30, 2012.
2. District's request to continue February 27 and March 26 – 30, 2012, is granted.
3. All dates currently set are vacated.
4. The hearing in this matter shall occur on May 7 – 11, 2012, beginning at 1:30 p.m. on May 7, 2012.⁴
5. **Any further request to continue will require an exceptional showing of good cause. Student is instructed to disclose these hearing dates to any potential legal counsel. A request to continue by any counsel accepting this case with knowledge of these dates will not constitute good cause.**

Dated: February 24, 2012

/s/

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

⁴ On the record the undersigned stated the hearing would start at 10:00 a.m. However, subsequently, the undersigned determined that May 7, 2012, is the first Monday of the month, when OAH does not start hearings until 1:30 p.m.