

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

MORGAN HILL UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2011100526

MORGAN HILL UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011061147

ORDER GRANTING REQUEST FOR
RECONSIDERATION, AND
CONTINUING PREHEARING
CONFERENCE AND HEARING DATES

On November 16, 2011, Presiding Administrative Law Judge (ALJ) Bob Varma issued an order denying Student's request for a continuance of the prehearing conference (PHC) and due process hearing currently set for November 30, and December 8, 2011, respectively. On November 17, 2011, Student filed a motion for reconsideration.¹ The District did not file an opposition to the motion for reconsideration.²

APPLICABLE LAW

The Office of Administrative Hearings (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.)

¹ Generally, the ALJ who issued an order rules on a motion for reconsideration of that order. However, Judge Varma is not available so the motion has been ruled upon by Acting Presiding Judge Rebecca Freie, following consultation with Judge Varma.

² The District did file an opposition to the original motion for continuance, which was considered by PALJ Varma when he ruled on the original motion.

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

Student's original motion for a continuance was denied without prejudice because Student's attorney claimed that he had hearings in other matters before OAH that were set on the same date set for this case. However, he did not provide OAH with any information about those cases, such as the OAH case numbers. Student's motion for reconsideration now contains this information, and the matter has been reconsidered.

On reconsideration, Student's motion for a continuance is granted for good cause.

ORDER

1. All hearing dates currently set in this matter shall be vacated.
2. The PHC in this matter shall be set for January 9, 2012, at 10:00 a.m.
3. The due process hearing in this matter shall commence at 1:30 p.m. on January 17, 2012, and shall proceed at 9:00 a.m. on January 18-19, 2012. The hearing shall resume on January 23, 2012 at 1:30 p.m., and shall continue at 9:00 a.m. on January 24-26, 2012.³

IT IS SO ORDERED.

Dated: November 22, 2011

/s/

REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings

³ Student states that the hearing of this consolidated matter shall take six days. In his original request for continuance, Student's attorney stated that he was available for hearing the weeks of January 2, 9, and 16, 2012. The District did not oppose these dates. Due to OAH's heavy calendar for the week of January 2, 2012 the PHC is being set on January 9, 2012, and the hearing shall begin on January 17, 2012. Additional hearing dates are being set for the week of January 23, 2012. If necessary, these dates may be modified during the PHC, or by a joint request or party motion for a continuance, providing good cause exists.

