

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012030702

ORDER DENYING DISTRICT'S
REQUEST FOR RECONSIDERATION
OF DENIAL OF STUDENT'S
CONTINUANCE MOTION; DENIAL
OF REQUEST TO CONTINUE
HEARING TO MUTUALLY AGREED
DATES

On May 21, 2012, District filed a motion for reconsideration of OAH's denial of student's request for a continuance. In the same motion, District included a request to continue the hearing to mutually agreed dates, which is supported by argument that the parties cannot agree on dates and declarations showing that District witnesses do not intend to be available during the summer. The prehearing conference had been held and the matter was set for hearing starting on May 22, 2012, and continuing for two weeks, Monday through Thursday.

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.)

Here, Student's request for continuance was based solely on a scheduling conflict Student's attorney had with representation of another student in a hearing starting May 22, 2012 in consolidated OAH case numbers 2012010154/2012031285. That conflict became moot as of May 21, 2012, when OAH case numbers 2012010154/2012031285 were continued. At no time did District timely seek its own continuance of this matter, such that its "reconsideration" motion is limited to reconsideration of the ruling on Student's motion to continue. Accordingly, reconsideration must be denied because regardless of District not having an opportunity to reply to the motion within three days, the "good cause" reason stated by Student, counsel's scheduling conflict in another matter, no longer existed.

Further, to the extent District opposed the continuance motion, as reflected in their motion for reconsideration, it was on the grounds that District witnesses are not available in the summer. This does not provide good cause for reconsideration, given that Student's attorney is available for hearing starting May 22, 2012, as is District. To the extent District

is now seeking its own continuance, the request is denied because District is seeking a facially unreasonable five month continuance and IDEA does not provide that due process hearings are suspended during the summer. Similarly, to the extent District seeks “mutually agreed dates” for a continuance, the filings of both District and Student demonstrate that they were unable to agree, such that the hearing should proceed as scheduled. Rather than demonstrate the need for a continuance, the District’s declarations only demonstrate that the matter should proceed to hearing as scheduled given the future unavailability of District’s witnesses and the complete inability of the parties to agree on alternate dates. While it is true that the District’s reply was not considered given the short time frames prior to hearing, as discussed above, District’s reply would not have changed the result.

Finally, District contends that it was somehow prejudiced because its attorneys spent their time opposing Student’s request for a continuance, rather than preparing for hearing. OAH cannot be responsible for counsel’s failure to prepare for hearing. Experienced attorneys, such as those employed by District, should be well aware that the status quo remains in effect until a motion is ruled upon and an order issued. The fact that a continuance motion was pending, or any other motion for that matter, would not excuse a party from preparing for a scheduled hearing under any circumstances. Simply put, District should have been preparing for hearing while opposing the motion. The choice to do otherwise rests solely with District’s counsel.

Accordingly, District’s request for reconsideration, and/or request for a continuance to October of 2012, is denied. The matter will proceed as scheduled.

IT IS SO ORDERED.

Dated: May 22, 2012

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings