

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MORELAND SCHOOL DISTRICT.

OAH CASE NO. 2012050296

ORDER DENYING REQUEST FOR  
RECONSIDERATION OF  
CONTINUANCE

On June 15, 2012, Administrative Law Judge (ALJ) Rebecca Freie issued an order granting the Moreland School District's (District) request to continue the dates in this matter. However, ALJ Freie granted alternate dates to those requested by District. On June 22, 2012, District filed a renewed request for continuance which, in essence, is a motion for reconsideration. On June 27, 2012, Student filed an opposition.

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.)

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

In its June 15, 2012 request for continuance, District stated that it required a continuance to late August or early September of 2012. The grounds were that counsel for District was on vacation during the originally calendared date for hearing, June 28, 2012; and, District's staff, who would be likely witnesses, were on summer break and would not report back to work until August 16 and 17, 2012. These were factors considered in ALJ Freie's order when she continued this matter and set the due process hearing to start on July 10, 2012.

District's renewed request for continuance, fails to state any new facts, circumstances or law in support of the requested reconsideration of ALJ Freie's order. District states that one of its witnesses will be in Ohio until August 5, 2012, addressing family matters due to the passing of a family member, a death that occurred earlier this school year. Next, District asserts that two other key witnesses will be on paid vacation from July 25 through August 10, 2012. While this provides more detailed information than the June 15, 2012 motion, it does not provide any facts that would constitute grounds to reconsider ALJ Freie's previous order. Witness unavailability during the summer, due to leave, was already considered by ALJ Freie. Accordingly, District's request for reconsideration and renewed request for continuance is denied. This matter will proceed as calendared and the hearing will commence on July 10, 2012, and proceed day-to-day.<sup>1</sup>

IT IS SO ORDERED.

Dated: June 28, 2012

/s/

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BOB VARMA  
Presiding Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> Based upon the various estimates provided for the length of a due process hearing by the parties, it appears this matter will take three to four days to complete. At the prehearing conference, or at the due process hearing, the parties may discuss scheduling a day of hearing in August 2012 to take the testimony of the three unavailable witnesses and to complete this matter.