

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TORRANCE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012100114

ORDER DENYING STUDENT'S
REQUEST FOR RECONSIDERATION;
DENYING STUDENT'S NOVEMBER
23, 2012 REQUEST FOR
CONTINUANCE; AND NOTICE OF
NO ACTION ON CERTAIN STUDENT
FILINGS

Reconsideration

On November 20, 2012, the undersigned administrative law judge issued an order denying Student's request for a continuance, denying Student's motion to dismiss, and striking Student's witness list as not being timely filed. On November 21, 2012, Student filed a document called "Notice of Appeal and Petitioning for Governmental Redress of Grievances." OAH interprets this document as a request for reconsideration of the November 20, 2012 Order.

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.)

To the extent Student's November 21, 2012 "Notice of Appeal....." can be construed as a motion for reconsideration of the denial of Students' motions for continuance and dismissal, and order striking Student's witness list, the motion is denied. Student did not present any new facts or law that were not available as of November 20, 2012, when OAH issued the denial orders and order striking Student's witness list.

November 23, 2012 Request for a Continuance

On November 23, 2012, Student filed a new motion to continue the hearing on the ground that Student's representative/stepfather was no longer available for hearing on November 26, 2012, because he wanted to be available to perform work as a priest

ministering to people who had been involved in a recent death. OAH is interpreting this as a separate, new request for continuance.

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).)

Here, in the November 23, 2012 Request for a Continuance, the reason given is that Student's representative, who appears to be Student's stepfather, states that he will be busy with his employment as a priest on the first day of hearing due to a recent need for his services. Specifically, Student's stepfather states he is needed to counsel people and conduct a memorial service. Student's stepfather does not address his availability in light of the hearing starting at 1:30 p.m., and offers no alternative dates or times for completing the hearing. Instead, Student's stepfather asks that the hearing be put on hold indefinitely because of his duties as a priest. However, while Student's stepfather alludes to some tragic circumstances, this does not present good cause to continue the hearing.

Specifically, Student's stepfather opposed granting District a continuance of the hearing on October 22, 2012, the date of the first prehearing conference. At the October 22, 2012 prehearing conference, the matter was continued, but to agreed dates closer in time, given Student's objection to District's request for February of 2013 hearing dates. As of October 22, 2012, Student's stepfather had notice that Student's prehearing conference statement was required to be filed by November 9, 2012 and that the hearing was going forward beginning November 26, 2012 because he had objected to a longer continuance. As of the November 14, 2012, prehearing conference, Student's stepfather and mother either did not answer the phone or stated they were unavailable to participate in the prehearing conference because of stepfather's employment. At no time has Student explained why his stepfather did not arrange for someone to assume his duties on the day of the prehearing conference or hearing, or why Mother, another family member, or representative, was not available to attend on Student's behalf. Given the amount of notice of the hearing date, which was set based on Student's stepfather's opposition to further continuances, and the lack of explanation why Student's Mother could not represent him, Student has not

demonstrated good cause for a continuance of the November 26, 2012 hearing start date. This is particularly true when at no time has Student proposed a date certain when stepfather would be available. Student's November 23, 2012 request for a continuance is denied. The hearing shall proceed as scheduled.

Notice of No Action

On November 21, 2012, Student filed a letter addressed to District's attorney, which stated that it was a response to District's November 20, 2012 letter. On November 26, 2012, Student filed a letter addressed to District's attorney that referred to being a notice of "appeal" and "complaints," and which also gave notice of Parents' intention to not appear at hearing. As to these documents, OAH is taking no action, as they appear directed to District and cannot reasonably be construed as prehearing motions. Accordingly, while these documents remain part of the record, OAH will make no ruling on them.

IT IS SO ORDERED.

Dated: November 26, 2012

/s/

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