

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN LEANDRO UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2013100168

ORDER DENYING REQUEST FOR
RECONSIDERATION

On October 21, 2013, the undersigned Administrative Law Judge issued an order granting Student's Request to Re-Set Timelines due to San Leandro Unified School District's (District) failure to serve Father with a copy of its request for an expedited due process hearing. On October 21, 2013, District filed with the Office of Administrative Hearings (OAH) a document entitled "Objection to Request for Continuance" which is deemed a request for reconsideration of the October 21, 2013 Order. The District requests that the expedited hearing remain on the previously set dates, or that it be held as soon as possible, no later than November 13, 2013, the date set for hearing in a second complaint filed by District naming Student, in OAH case number 2013100539.¹ OAH has not received a response on behalf of Student.

In support of its request, District alleges the following: maintaining Student's current placement presents a danger to Student and others; the law requires a hearing within 20 school days of the date the hearing was requested, and there is no legal support pursuant to 20 U.S.C. § 1415(k)(4)(B) for a continuance due to a failure to serve the complaint; Father has been aware of this matter since at least October 15, 2013, when he attended mediation in this case, and he consented to the September 27, 2013 individualized education program (IEP) which offers the same placement the District seeks as an interim alternative educational setting (IAES); Mother was the party requesting to re-set timelines and her prior

¹The District attached to its request for reconsideration, a proof of service of its request for an expedited hearing, indicating that Father was served by United States mail on October 21, 2013, at his address of record. Pursuant to the October 21, 2013 Order, the District's complaint is deemed filed on October 21, 2013, and OAH will issue a new scheduling order re-setting all expedited hearing dates. The proof of service identifies numerous other documents the District served upon Father, including documents pertaining to another matter, OAH Case Number 2013100539. If the District wishes to file any documents regarding Case Number 2013100539, it must file a proper, noticed motion pertaining to that case.

motion for continuance was denied; and this expedited hearing should be heard prior to the second complaint filed by District against Student in OAH Case Number 2013100539, which seeks to implement the September 2013 IEP offer.²

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.)

DISCUSSION

Motions for reconsideration require the moving party to show new facts or law which brings the appropriateness of the prior order into question. Here, District alleges no new facts, circumstances, or law in support of the request reconsideration. Indeed, District's counsel at the prehearing conference (PHC) on October 21, 2013, argued that this matter presented an emergency situation which should not be delayed. The undersigned is and was well aware that Mother previously sought, and was denied, a continuance of this matter, and that it was her motion to re-set timelines due to deficient notice. However, at the PHC, Father testified under oath that he was not waiving his right to notice and proper service of the complaint.

Student's motion to re-set timelines was granted due to District's failure to notice a named party who holds educational rights, the Father. In focusing on when Father knew about the hearing request and whether he would be prejudiced by proceeding on the initial timelines, District overlooks basic jurisdictional requirements. OAH cannot make a determination as to a party unless it has jurisdiction over that party. OAH does not have jurisdiction over a party that has not been properly served with a complaint. District's position that it can "request" an expedited hearing, fail to serve a Parent, and still proceed to hearing within 20 school days is unsupported by the law and, quite frankly, troubling.³

² The District assumes that OAH Case Number 2013100539 will be able to proceed on the currently set timeline although that complaint is subject to the same jurisdictional deficiency as presented in this case. A proof of subsequent service of that complaint may cure a defect in notice, but parties have a right to be heard on the legal timelines and are encouraged to bring any necessary motions.

³ This ALJ cannot help but wonder if District would feel the same if it was Parent who filed for an expedited hearing and failed to serve District.

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.) However, when a matter is filed as an expedited due process hearing case, OAH has to hold a due process hearing within 20 school days of the filing of the case. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).) When a school district believes that maintaining a student's current placement is substantially likely to result in injury to the student or others, it may, as here, request an expedited hearing. (20 U.S.C. § 1415(k)(3)(A).) The hearing is requested by filing a complaint. (20 U.S.C. § 1415(f)(1)(A); 34 C.F.R. § 300.532(a).)

The Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. § 1400, et. seq.) (IDEA) requires that the party requesting the due process hearing serve a copy of the complaint on the opposing party. (20 U.S.C. § 1415(b)(7); 34 C.F.R. § 300.508(a).) Similarly, the California Education Code Section 56502, subdivision (c)(1) requires that the party initiating the complaint shall provide the other party to the hearing with a copy of the request for hearing at the same time the request is filed. The District failed to comply with this required procedure.

Since the District has failed to show any new facts, circumstances, or law in support of its request for reconsideration, the request is denied.

IT IS SO ORDERED.

Dated: October 23, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings