

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BONITA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014030697

ORDER GRANTING REQUEST FOR
RECONSIDERATION, GRANTING IN
PART REQUEST TO VACATE APRIL
16, 2014 ORDER, AND CONFIRMING
HEARING DATES

Student filed a request for due process hearing only on March 17, 2014. On March 20, 2014, Student filed a unilateral request for continuance, which the Office of Administrative Hearings (OAH) denied without prejudice on March 26, 2014. On April 4, 2014, District filed a motion to dismiss the complaint on the ground that Parent had not participated in a mandatory resolution session. On April 7, 2014, Student timely filed a response to District's motion and renewed her request for a continuance. On April 8, 2014, OAH issued an order denying Student's request for continuance as moot, denying District's motion to dismiss, and resetting timelines to allow time for a resolution session. On April 10, 2014, Student filed a request for continuance and for a "conflict resolution" meeting. District did not respond. On April 13, 2014, Student filed a notice regarding resolution session and requested a continuance. District did not respond.

On April 16, 2014, the undersigned administrative law judge issued an order setting the hearing timelines and continuing the due process hearing for good cause. On April 21, 2014, District filed a motion for reconsideration, of the April 16, 2014 Order, or alternatively responding to Student's request for a "conflict resolution" meeting and a continuance. Parent did not respond.

As discussed below, District's motion for reconsideration is granted, its motion to vacate the April 16, 2014 Order is partially granted, and all hearing dates set in the April 16, 2014 Order are confirmed.

APPLICABLE LAW

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.)

DISCUSSION

District credibly contends that it did not receive Mother's April 9, 2014 and April 13, 2014 filings with OAH, thereby claiming it could not respond to Mother's second request for continuance. The requests by Mother filed with OAH do not show that notice was given to the District. Notice is usually shown by including a "proof of service," which means a declaration of how notice was provided (fax, mail, messenger, hand delivery). Accordingly, District's motion for reconsideration of the April 16, 2014 Order is granted.

District seeks an order "reversing" the April 16, 2014 Order. In practicality, however, District has not offered any new law or different facts that justify vacating the April 16, 2014 Order in its entirety. District argues that it has 1) a right to participate in a resolution session and 2) a right to a speedy hearing.

Regarding the resolution session, the April 8, 2014 Order reset the timelines in this case to enable the parties to participate in a resolution session. The April 16, 2014 Order setting hearing timelines effectively terminated District's right to a resolution session. District has established good cause for vacating that portion of the April 16, 2014 Order on the ground that it did not receive Mother's requests filed with OAH and could not respond in substance. Accordingly, District's request to vacate the order setting the hearing timelines effective April 16, 2014 is granted. Neither party has offered any credible reason why they cannot meet and confer in a reasonable manner and set a date for a resolution session that is mutually convenient, without the necessity of continuing to file requests for relief from OAH. Given the history of this case until now, the April 16, 2014 Order provides the parties ample time to hold a resolution session and later, mediation, if desired, to try to resolve the case before the hearing.

Regarding the continuance of hearing dates, the April 16, 2014 Order continued this case, based on good cause established by Mother in both her first and second requests for continuance, setting the hearing on August 5, 2014, which was the first available date for OAH at the time the Order was issued. District offered no credible reason for vacating that order. Accordingly, District's request to vacate the April 16, 2014 Order granting a continuance is denied and the hearing dates are confirmed.

ORDER

1. District's motion for reconsideration is granted as to the portion of the April 16, 2104 Order that stated "The due process hearing timelines shall begin as of the date of this order pursuant to 34 C.F.R. §300.510(b)(5)," and that language is stricken. The parties have 30 days from April 8, 2014 to complete a resolution session.

2. District's motion for reconsideration of the continuance granted in the April 14, 2014 Order is granted. However, upon reconsideration, District's request to vacate the order granting a continuance is denied, and the April 16, 2014 Order granting a continuance is affirmed.

3. All hearing dates set in the April 16, 2014 Order apply and are confirmed.

DATE: April 23, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings