

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

BALDWIN PARK UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014030809

ORDER GRANTING DISTRICT'S
REQUEST FOR RECONSIDERATION
AND SETTING TELEPHONIC TRIAL
SETTING CONFERENCE

On April 14, 2014, the undersigned administrative law judge issued an order granting Parent's request for continuance of the due process hearing filed on the same date, in reliance on communications between OAH staff and District's counsel. The hearing was scheduled to begin on April 15, 2014. On April 15, 2014, District filed an opposition to Student's request for continuance, which was not supported by a sworn declaration, and requested that the ALJ set a trial setting conference, on the ground that District did not agree to the continuance and a miscommunication had occurred between District's counsel and OAH staff. District's opposition will be construed as a motion for reconsideration.

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 AND ORDER

District's motion for reconsideration, despite the lack of a sworn declaration, demonstrates an inadvertent misunderstanding by OAH staff as to District counsel's intent that constitutes new or different circumstances. Therefore, District's motion for reconsideration of the prior order is granted.

District participated in a prehearing conference (PHC) on April 11, 2014 before the undersigned ALJ. Parent did not respond to phone calls from OAH or the ALJ, assisted by a Spanish speaking interpreter, immediately before the PHC, or in the days preceding, and Parent did not appear for the PHC. The PHC Order issued by OAH was delivered by

overnight mail to Parent on Monday, April 14, 2014, confirming the hearing would start on April 15, 2014.

Mother filed a request for continuance of the hearing dates at 12:43 p.m. on April 14, 2014 claiming she needed time to find a Spanish speaking attorney or legal representative. Spanish speaking OAH staff communicated directly with Mother to confirm her intent to find counsel. Staff in Sacramento communicated by phone with District's counsel, confirmed that the request for continuance had been received by OAH, and misunderstood District's counsel's acknowledgment of the continuance request to be a consent to the request itself. Staff communicated that District did not oppose the continuance to the undersigned ALJ. In reliance on those communications and on the record in this case, and on the purported lack of opposition, the undersigned issued an order on April 14, 2014 continuing the PHC to June 6, 2014 and the hearing to June 10, 11, and 12, 2014.

District filed its opposition on April 15, 2014, claiming that it did not agree to a continuance to the dates set, that Parents had been represented by a Spanish speaking advocate at IEP meetings, and that the delay would prejudice the District because a continuance to mid-June would render its complaint moot, and its staff would be on summer break after May 30, 2014.

The availability of District's staff is not grounds, by itself, to vacate the hearing dates in June. OAH is available year-round for due process hearings, which means the parties must take the necessary steps to have witnesses available for hearing even if they are on scheduled breaks. However, under the circumstances, where Parent has failed to respond to multiple communications from OAH regarding the hearing including failing to appear at the PHC, and on the inadvertent misunderstanding between District's counsel and staff, District has demonstrated that grounds exist to set a trial setting conference to discuss vacating the order continuing setting the hearing dates for June 10-12, 2014, and resetting the dates.

ORDER

1. District's motion for reconsideration of Student's motion for a continuance is granted.
2. A telephonic trial setting conference shall take place on **Friday, April 18, 2014 at 2:00 p.m.** A Spanish speaking interpreter will be available for Mother during the telephonic conference. The ALJ will initiate the phone call to both parties. The call will come from a "blocked" number. Any call blocking services should be turned off to allow the call to reach the recipient.
3. Mother shall contact OAH before noon on Friday, April 18, 2014 to confirm her phone number and that she will be available at 2:00 p.m. If Mother is not available when the ALJ calls, the trial setting conference shall proceed without her participation and new dates will be set for the due process hearing in accordance with District's schedule.

DATE: April 15, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings