

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DESERT SANDS UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014031057

ORDER GRANTING REQUEST FOR
RECONSIDERATION AND DENYING
REQUEST TO ADVANCE HEARING
DATES

On April 10, 2014, the undersigned granted a joint request to continue dates in this matter. While the request was granted, the Office of Administrative Hearings did not grant the parties the due process hearing dates they had submitted in their joint request. Instead of the requested date of May 6, 2014, OAH assigned July 22, 2014, as the first day of hearing. On May 2, 2014, almost a month later, the Desert Sands Unified School District (Desert Sands) filed a request for reconsideration and a request to advance due process hearing dates. No response was received from Student.

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.)

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

Reconsideration

The parties' original request for a continuance was filed using OAH's "Request for Continuance of Initial Special Education Due Process Hearing Date and Initial Mediation Date" form. The form does not require the parties to establish good cause as a basis for the request if the request is the first continuance request and all parties have agreed to the request. Therefore, the parties did not set out all grounds for a continuance. The motion to reconsider does not specifically set out grounds for a continuance, but rather sets forth contentions of Desert Sands as to why the April 10, 2014 order should be vacated. However, out of an abundance of caution, the request for reconsideration is granted.

Request to Advance Dates

As set out above, OAH considers many factors when considering a party's request to continue. While OAH will try to accommodate dates jointly requested by parties, any resetting of a matter is subject to operational needs.

Desert Sands sets forth three arguments as to why the April 10, 2014 order should be vacated and the hearing dates advanced to June 3, 2014. First, Desert Sands contends that June 3, 2014, is sufficient time for Student to seek and retain legal representation. Because the original request had attached to it an email communication between the parties regarding Parent's desire to obtain representation, that factor was already considered in the April 10, 2014 order and needs no further discussion.

Desert Sands further asserts that several of its witnesses will be unavailable for a due process hearing in July, due to summer recess of the school district. None of the witnesses who are unavailable filed a declaration under oath as to their unavailability. More importantly, the Individuals with Disabilities Education Act does not provide for a suspension of due process hearing proceedings during summer recess.

Finally, Desert Sands contends that time is of the essence with respect to resolution of the parties' dispute over assessment of Student. It contends that Parent also agrees that a speedy resolution of this matter is required. However, OAH provided the parties with an initial due process hearing date that was within the requisite 45-day time line for the conducting of a due process hearing and issuance of a written decision. It was the parties' who sought a continuance of this matter. Finally, a review of the complaint in this matter

reveals that a dispute over assessment of Student has been ongoing since 2009. While the parties reached an agreement in April 2011, that agreement was not fully carried out and the parties have continued to dispute Desert Sands' right to assess Student for the last three years. Desert Sands filed in March 2014, on a dispute it has known has existed since April 2011. The arguments raised in the request to advance hearing dates are not persuasive and the request is denied. All dates currently on calendar are confirmed.

IT IS SO ORDERED.

DATE: May 15, 2014

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings