

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2015020856

ORDER GRANTING REQUEST FOR
RECONSIDERATION, AND
GRANTING IN PART REQUEST FOR
CONTINUANCE

On April 17, 2015, the undersigned administrative law judge issued an order following prehearing conference granting a continuance of this matter to June 22, 2015. On May 28, 2015, Sequoia Union High School District filed a motion to continue this matter until September 2015, due to the unavailability of its Special Education Director and summer break. This motion is treated as a request for reconsideration. On May 29, 2015, Parent on behalf of Student, filed a non-opposition to Sequoia's request.

APPLICABLE LAW

Reconsideration

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.)

Continuance

A due process hearing must be conducted and a decision rendered within 45 days of receiving notice of the due process complaint 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).) The Office of Administrative Hearings considers all relevant facts and circumstances, including proximity to 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 continuance's impact 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

Sequoia alleges one new fact in support of the request reconsideration, namely, that its Director of Special Education is unavailable for hearing due to a vacation the week of June 22, 2015. Therefore, the request for reconsideration is granted.

On reconsideration, Sequoia has established good cause to continue the hearing which is currently scheduled to begin on June 22, 2015, because of the unavailability of the special education director. Sequoia alleges generally that it seeks a continuance of this matter until September because Student will suffer no prejudice from such a delay and agrees to a September hearing date, and Sequoia cannot proceed sooner due to summer break.

Summer break does not constitute good cause for a continuance. The Individuals with Disabilities Education Act does not suspend due process hearings for summer recess. To do so would bring special education proceedings to a halt for approximately three months every year. Clearly this is not the intent of the speedy resolution mandate. The parties have available to them the power of the subpoena to compel the attendance of their respective witnesses. That the parties agree to continue this matter until September 2015, does not constitute good cause.¹

Accordingly, Sequoia's request for a further continuance is granted, but not for the period of time requested. All dates are vacated. This matter will proceed to hearing as follows:

¹ Should either party seek to raise grounds for a continuance other than summer break, they are advised to submit detailed declarations under penalty of perjury providing specific information as to why good cause exists, and consult as to specific available dates.

Prehearing Conference:

June 29, 2015, at 1:00 p.m.

Due Process Hearing:

July 7, 2015, at 9:30 a.m., July 8-9, 2015, at 9:00 a.m.; July 14, 2015, at 9:30 a.m., and July 15, 2015, at 9:00 a.m., and continuing day to day Monday through Thursday, as needed at the discretion of the ALJ.

IT IS SO ORDERED.

DATE: May 29, 2015

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings