

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2015050526

ORDER GRANTING REQUEST FOR
RECONSIDERATION AND DENYING
REQUEST TO CONTINUE

On June 11, 2015, the undersigned Presiding Administrative Law Judge issued an order partially granting Temecula Valley Unified School District's motion to continue. The order continued the hearing and scheduled the hearing on July 9, 14, 15, 16, 21, and 22, 2015. On June 18, 2015, Temecula filed a motion for reconsideration, citing the unavailability of counsel on July 7 for a hearing that may continue until July 9, 2015. On June 22, 2015, Student filed an opposition to the 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.)

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).) The Office of Administrative Hearings 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

Temecula has shown new facts and promptly filed for reconsideration of the order partially granting the continuance in this matter. Therefore the motion for reconsideration is granted. However, Temecula has not shown unavailability of counsel on the first date of the hearing, July 9, 2015 and there has been no showing of unavailability on any other scheduled hearing date. Counsel relies on a possibility of unavailability because he is in a hearing in another matter and makes no showing as to why the other matter cannot be handled by another attorney or why the other matter will likely last three days. Should counsel for Temecula actually have a conflict because the matter starting on July 7, 2015 continues through July 9, 2015, he may file a request to continue the July 9, 2015 date only and the matter can still proceed on the other scheduled dates. No good cause has been shown for a continuance at this time.

DATE: June 22, 2015

/s/

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings