

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

VISALIA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014110948

ORDER GRANTING REQUEST FOR
RECONSIDERATION

On February 6, 2015, the undersigned Administrative Law Judge issued an order granting Student's request for continuance and scheduling the hearing to commence on April 1, 2015. On February 11, 2015, Visalia Unified School District filed a motion for reconsideration as to the scheduling of the continued hearing, supported by a declaration under penalty of perjury from its Director of Special Education. Visalia requests that the commencement of the hearing be continued from April 1, 2015, to April 7, 2015, one of the dates currently calendared for this multiple day hearing. On February 12, 2015, Student filed a non-opposition to Visalia's request that the hearing not start the week of April 1, 2015, but opposed Visalia's request that the hearing start on April 7, 2015, given Student's unavailability due to a prior superior court appearance.¹

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.)

¹ Student originally requested that this hearing be continued until at least April 2, 2015, and did not note his unavailability for April 7, 2015, nor has Student himself sought a further continuance.

Continuance

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).)

DISCUSSION AND ORDER

Visalia alleges new facts in support of the request for reconsideration, namely that it is closed for Spring Break from March 31 through April 3, 2015, and many of its necessary witnesses will be out of town and unavailable to testify on the first two dates selected for hearing. The motion is timely and Visalia's request for reconsideration is granted.

On reconsideration and taking into account Student's availability, this matter is now set for hearing beginning April 8, 2015, at 9:30 a.m., continuing on April 9, 2015, at 9:00 a.m., April 13, 2015, at 1:30 p.m., and April 14, 2015, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.² The prehearing conference remains as previously scheduled. No further continuances will be granted without a showing of substantial good cause.

IT IS SO ORDERED.

DATE: February 13, 2015

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

² The parties are on notice that the hearing ALJ may add Friday, April 9, 2015, as an additional hearing day.