BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2019110180

and

CAPISTRANO UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2019120240

ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING REQUEST FOR CONTINUANCE

FEBRUARY 20, 2020

On January 22, 2020, the undersigned Administrative Law Judge issued an order granting a second request to continue the due process hearing in this matter. On February 19, 2020, Capistrano Unified filed a motion for reconsideration. The Office of Administrative Hearings, referred to as OAH, did not receive a response from Student, but the motion represented that Student's attorney was aware of the request for a change of dates in this motion.

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, generally within ten days. (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.)

Here, Capistrano's attorney filed the motion almost one month after the order was issued, which under these facts is reasonable. He asserted that OAH granted the motion to continue but set the hearing for dates during the week after the parties requested. OAH was not setting hearings during the week of March 30, 2020, the dates the parties requested, because of the mid-week holiday. For that reason, the hearing was set for April 7, 8 and 9, 2020. Capistrano's attorney represented in this motion that the new dates fall during a school break, and therefore essential witnesses would not be available for hearing. Those are new facts that were not available to OAH at the time the Order was issued. Capistrano proposed that OAH continue the hearing to April 21, 22 and 23, 2020, claiming that those dates were the first available dates for both parties.

Capistrano offered new facts, circumstances or law to support reconsideration. The motion for reconsideration is granted.

On reconsideration, good cause exists to continue the hearing dates currently set for April 7, 8 and 9, 2020, in particular because those dates were set by OAH rather than being requested by the parties in their request for continuance. Therefore, Capistrano's request that the hearing dates be continued is granted.

The prehearing conference will be on April 13, 2020 at 1:00 p.m. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date.

The Due Process Hearing will be held on April 21, 22, and 23, 2020. The hearing shall begin at 9:30 AM the first day, and at 9:00 AM on all other days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness.

IT IS SO ORDERED.

DocuSigned by:
Adrienne L. Krikorian
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Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings