BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ARCADIA UNIFIED SCHOOL DISTRICT AND BONITA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016060105 ORDER ON RECONSIDERATION, CONFIRMING PREVIOUS DENIAL OF CONTINUANCE, WITHOUT PREJUDICE

On July 12, 2016, the undersigned administrative law judge issued an order denying the parties' joint first request to continue the dates in this matter, which sought hearing dates in late November and early December. The hearing is currently scheduled for July 25, 2016.

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).) 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

The reason stated for the continuance in the July 12, 2016, joint request was that "Petitioner's counsel is seeking to get an assessment for [Student]." No information was provided as to how or why the assessment affected or should delay this adjudication, nor why the assessment could not be accomplished more expeditiously. Thus the July 12, 2016 denial found that the stated reason did not constitute good cause for a lengthy continuance of approximately 120 days.

Student in the Motion for Reconsideration alleges the following pertinent new facts and circumstances, in support of the request for reconsideration: Student's family is out of the country in China visiting an ill relative; the family is scheduled to return in late July; Student is scheduled to begin school in August; a planned assessment requires observation of Student in the school setting. Thereafter, it is anticipated it will take several weeks to prepare the assessment report and several further weeks to hold an IEP meeting to review it. Reconsideration is granted, to consider these additional facts.

However on reconsideration the prior denial of the continuance is re-affirmed. The facts do not constitute good cause for a continuance of 120 days into late November and early December. The parties did not meet and confer to discuss any potential earlier dates. No information is provided as to how or why the contemplated assessment affects, or should delay this adjudication. No information is provided as to why, should the assessment be relevant, its contemplated completion in or around September justifies delaying the hearing to late November.

This denial is without prejudice; the parties may raise their continuance request again at the PHC, which will procced as scheduled. The ALJ may consider their arguments as to the relevance of the assessment, and an expeditious hearing schedule.

ORDER

On reconsideration, the joint request for continuance is denied, without prejudice. Unless and until otherwise ordered, all prehearing conference and hearing dates are confirmed and shall proceed as calendared

IT IS SO ORDERED.

DATE: July 14, 2016

DocuSigned by:
June Lehrman
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JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings