BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MONTEBELLO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017090923 ORDER GRANTING REQUEST FOR RECONSIDERATION, ORDER GRANTING PARTIES' REQUEST TO ADVANCE DUE PROCESS TIMELINE, AND ORDER GRANTING PARTIES' STIPULATION TO CONTINUE THE PREHEARING CONFERENCE AND HEARING DATES

On December 1, 2017, the undersigned Administrative Law Judge granted Student's November 30, 2017 motion to file an amended complaint. OAH issued a new scheduling order, restarting the timeline, setting the prehearing conference for January 22, 2018, and the due process hearing for January 30, 2018.

On December 5, 2018, the parties submitted a joint request to set mediation for December 12, 2017, and to continue the hearing to January 16, 17, and 18, 2018, with a January 8, 2018 prehearing conference. On December 7, 2017, OAH informed the parties that their joint request was moot, since a new scheduling order issued when the motion to amend was granted.

On December 8, 2017, Student filed a motion for reconsideration of the scheduling order, asking that the prehearing conference be set for January 8, 2018, and the hearing set for January 16, 17, and 18, 2018.

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.)

The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).) Whenever OAH grants a motion to amend, OAH issues a new scheduling order, assuring that respondent school district has time to calendar and hold a resolution session. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006)[1].)

The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) If the parties agree to waive the resolution session, the 45-day timeline for a due process hearing begins the day after the waiver. (*Id*. at § 300.510(c)(1).)

When the parties agree in writing to waive a resolution session, the Office of Administrative Hearings may advance the prehearing conference and hearing, beginning of the 45-day timeline for hearing, upon a showing of good cause.

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

Student's November 30, 2017 motion to amend complaint included a stipulation signed by both parties agreeing to the amendment's filing and to the then scheduled dates. The stipulation to the amendment to retain the January 16, 17, and 18, 2018 hearing dates constituted a written waiver of the resolution session following the filing of an amended complaint. (34 C.F.R. § 300.510(a)(3).) The joint request for mediation and request to continue the due process hearing further evidences the parties' agreement to participate in

[1] Unless otherwise stated, all references are to the 2006 edition of the Code of Federal Regulations.

mediation in lieu of the resolution session. Accordingly, Student's motion for reconsideration and the parties' joint request for mediation and continuance present, essentially, a joint motion to advance the due process hearing to January 16, 17, and 18, 2018, with a January 8, 2018 prehearing conference and is supported by good cause.

In Student's motion for reconsideration, Student's counsel explains that the parties stipulated to retain the January 16, 17, and 18, 2018 hearing dates in order to assure Student's counsel's ability to participate in the hearing. Student's attorney is pregnant and scheduled to give birth in the second week of February 2018. Otherwise, Student would have to retain new counsel. These additional facts demonstrate good cause to set the due process hearing on the dates agreed upon by the parties in the request for mediation and continuance.

ORDER

1. Student motion for reconsideration of the scheduling order issued following the amended complaint filing is granted.

2. All presently scheduled prehearing conference and hearing dates are vacated. The 45-day timeline begins December 1, 2017, the day after the waiver.

3. Student has demonstrated good cause in support of the parties' request to continue and the continuance request is therefore granted.

4. The prehearing conference is continued to 3:00 p.m., January 8, 2018.

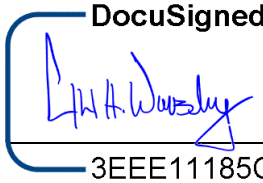
5. The due process hearing is continued to January 16, 2018 at 1:30 p.m., and January 17 and 18, 2018, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

6. The parties may file a joint request for a mediation date.

IT IS SO ORDERED.

DATE: December 11, 2017

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings