BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Consolidated Matters of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>OAKLAND UNIFIED SCHOOL DISTRICT, | OAH Case No. 2014080454 |
| OAKLAND UNIFIED SCHOOL DISTRICT,<br><br>v.<br><br>PARENT ON BEHALF OF STUDENT. | OAH Case No. 2014050059<br><br>ORDER GRANTING REQUEST FOR RECONSIDERATION; GRANTING REQUEST FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND HEARING DATES |

On November17, 2014, the undersigned presiding administrative law judge issued an order denying the parties' joint request for a continuance of the prehearing conference and hearing dates in this matter. On November 25, 2014, Student filed a motion for reconsideration supported by his counsel's declaration under penalty of perjury. On November 25, 2014, the Oakland Unified School District (Oakland) filed a non-opposition to Student's motion along with a supporting declaration of its counsel.

## 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.)

*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).) 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 AND ORDER

*Reconsideration*

Student alleges new facts and circumstances in support of the request for reconsideration. Specifically, Student alleges that prior to receiving notice of the hearing schedule, his counsel planned a family vacation to occur at the same time as the dates set for hearing. Student's motion is supported by a declaration under penalty of perjury, is timely, and unopposed. Accordingly, Student's motion for reconsideration is Granted.

*Continuance*

This matter has been pending since April 2014, when Oakland filed its initial request for hearing. After two continuances and an order for consolidation, the consolidated matter is currently set for hearing beginning December 15, 2014. Student's motion establishes good cause for one further continuance due to the unavailability of his counsel. On July 22, 2014, prior to the September 26, 2014 order which set the current hearing dates, Student's counsel scheduled a family vacation for December 16 through 20, 2014, using time share points. This planned vacation cannot be rescheduled without disruption and additional expense. Oakland supports the request for continuance.

On reconsideration, having considered the parties' pleadings, evidence and contentions, a continuance is granted. **No further continuances will be granted without a showing of exceptional good cause.** All dates are vacated and this matter will be set as follows:

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| Prehearing Conference: | January 23, 2014, at 1:00 p.m. |
| Due Process Hearing: | February 3, 2014, at 9:30 a.m., February 4-5, 2014, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. |

IT IS SO ORDERED.

DATE: December 2, 2014

**/S/**

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings