BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT

v.

SUMMIT PUBLIC SCHOOLS.

OAH CASE NUMBER 2022080039

ORDER DENYING REQUEST FOR RECONSIDERATION

SEPTEMBER 06, 2022

On September 2, 2022, , the undersigned Administrative Law Judge issued an order following prehearing conference, referred to as PHC, and granting Summit Public School's request for a continuance. On September 6, 2022, Student filed a motion for reconsideration supported by her counsel's declaration. On September 8, the Office of Administrative Hearings, called OAH, received an opposition from Summit.

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, 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.)

DISCUSSION

Student's motion, though timely filed, failed to offer new facts, circumstances, or law supporting reconsideration. Student argues she had only one day to oppose Summit's motion and that Summit erroneously filed the motion only two business days before the PHC. Student cites California Code of Regulations, Title 1, section 1022, subdivision (e) for the propositions that parties to a due process hearing must file motions at least 15 days before the commencement of the hearing and responsive pleadings must be filed no later than three days before the motion hearing date. However, section 1022 does not apply to motions to continue and is not applicable to special education due process hearings. (Cal. Code Regs., tit.1, § 1020(j).) Rather, OAH requires that motions be filed three business days before the PHC, as stated in OAH's August 2, 2022 scheduling order in this matter.

Here, Summit timely filed their motion to continue three business days before the PHC, which OAH received at 4:46 PM on August 30, 2022. Summit's opposition included a facsimile confirmation sheet reflecting the time Summit filed the motion with OAH and served the motion on Student, showing an Eastern Standard Time of 7:55:47 PM. OAH held the PHC three days after receipt of the motion, providing Student ample time to oppose the motion on the record in lieu of filing a written opposition.

Student's motion for reconsideration provides no reason supporting her contention that she could not oppose the motion at the PHC. Student alleges their office received the motion during the evening hours of August 30, 2022 and that, for

internal processing reasons, counsel did not receive it right away. Neither the motion nor declaration provide specific information as to the processing issues, the date and time counsel received the motion, nor any new or different facts or law opposing the motion compared to oral argument held on the record during the PHC.

ORDER

Student has not established the order granting Summit's motion to continue made at the September 2, 2022 PHC should be reconsidered. The motion for reconsideration is denied. All dates set in this matter are confirmed.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings