BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

HEMET UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022100868

ORDER GRANTING REQUEST FOR RECONSIDERATION

NOVEMBER 15, 2022

On November 3, 2022, the undersigned administrative law judge issued an order denying the parties' request for a due process hearing continuance. On November 10, 2022, the parties filed a motion for 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, 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.)

Hemet Unified School District offered new facts to support reconsideration. On November 3, 2022, the Office of Administrative Hearings scheduled a due process hearing for December 20, 21, and 22, 2022, the same days as this matter, in an earlier filed case where Hemet's counsel is the counsel of record. The parties were unaware of this at the time it filed its original request for a continuance on November 2, 2022. Thus, the motion for reconsideration is granted.

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 because it is not ready for hearing. (Ed. Code, § 56505, subd. (f)(3); 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 or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

For reconsideration, a short continuance request is granted for good cause due to counsel unavailability. All previously scheduled dates are vacated. The case will proceed as follows:

PREHEARING CONFERENCE is December 23, 2022, at 3:00 PM.

All other prehearing matters will be addressed at the December 23, 2022 prehearing conference. All prehearing motions must be filed three business days before the prehearing conference.

Due Process Hearing is January 4 and 5, 2023.

The hearing will be conducted via telephone or videoconference and will begin at 9:30 AM and end at 3:30 PM on all days, unless otherwise ordered. The hearing will continue day to day at the discretion of the ALJ. The parties must immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses, if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings