BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

TURLOCK UNIFIED SCHOOL DISTRICT AND MODESTO CITY SCHOOLS.

OAH CASE NUMBER 2019081052

ORDER GRANTING REQUEST FOR RECONSIDERATION, DENYING MOTION TO EXTEND DISMISSAL, AND SETTING MATTER FOR HEARING

FEBRUARY 20, 2020

On February 18, 2020, the undersigned issued an order denying Student's request to extend the automatic case dismissal. On February 19, 2020, Student filed a motion for reconsideration requesting the extension or schedule the matter for hearing. On February 19, 2020, Turlock joined Student's reconsideration request. Neither party asserted that Turlock's school board had rejected or not approved the settlement.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider ruling on a showing of new or different facts, circumstances, or law, 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 may 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

The parties submitted additional information clarifying their respective positions and the request for reconsideration is GRANTED. As noted in the original order, on January 6, 2020, Student and Turlock submitted a joint request to vacate the then pending hearing dates. The parties represented that they had reached a final settlement agreement pending board approval. The board meeting was scheduled for January 21, 2020. The parties also noted that they would be filing, "a joint stipulation in federal court asserting the District will not invoke exhaustion of remedies as an affirmative defense." The parties' request was granted to the board approval only.

The parties did not indicate that Turlock's school board did not convene as anticipated or rejected the settlement. Accordingly, no basis to further extend the dismissal was established.

Student asserts that the request to vacate hearing dates was based on both conditions being met, namely both board approval and the federal court's approval of the parties' stipulation. Turlock agrees with Student's position and asserted that OAH has granted similar relief in another matter where the parties' settlement was contingent on the court's approval of a minor's compromise.

First, OAH orders are not binding authority in other matters. Second, in the case cited by Turlock, the parties provided the originally scheduled hearing date for the minor's compromise. Here, the parties seek the court approve a stipulation regarding exhaustion of administrative remedies and have provided no indication of when the hearing may be scheduled or occur. Federal law places great emphasis on timely resolving IDEA claims. Placing those claims in abeyance for an unspecified future date is inconsistent with that mandate.

The parties' joint request to extend the dismissal timeline is DENIED. The request to place this matter back on calendar for hearing is GRANTED. A prehearing conference has already been held and a second one will not be scheduled. This matter is continued until the due process hearing which will is set as follows:

March 10, through 12, 2020. The hearing shall begin at 9:30 on the first day and 9:00 AM on all subsequent days unless ordered otherwise. If not complete, the matter will continue day-to-day thereafter at the discretion of the ALJ.

Nothing in this order prevents the parties from seeking a continuance. They are on notice, however, that good cause for a continuance must be established.

IT IS SO ORDERED.

DocuSigned by:
Joy Redmon
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Joy Redmon
Presiding Administrative Law Judge
Office of Administrative Hearings