BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN LEANDRO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018090829 ORDER GRANTING MOTION FOR RECONSIDERATION AND DENYING REQUEST FOR MEDIATION

On October 25, 2018, San Leandro Unified School District filed a Motion for Reconsideration of the undersigned's October 24, 2018, Order denying the parties' joint request to schedule a second mediation. For the reasons set forth below, the Motion for Reconsideration is GRANTED and the request to schedule a second mediation is DENIED.

October 5, 2018, the parties filed a joint request to schedule mediation for October 25, 2018. An order granting the parties' joint request and scheduling a mediation for their requested date was issued the same day.

On October 24, 2018, the day before the scheduled mediation, San Leandro cancelled the mediation. Later the same day, the parties submitted a joint request to schedule mediation and included two proposed dates. No explanation for the prior cancellation or a reason necessitating that a second mediation be scheduled was provided. Accordingly, the request was denied.

APPLICABLE LAW

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 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.)

San Leandro seeks reconsideration based on new facts and circumstances regarding the assigned mediator. San Leandro further explains why it failed to previously provide this information at the time it cancelled the prior mediation.

Regarding the assigned mediator, San Leandro asserts the mediator has been assigned to other mediations in the district. San Leandro represents that it has had "negative experiences," during past mediations and expressed its belief that the previously assigned mediator, will be ineffective in helping the parties resolve this dispute.

Regarding the reason no explanation was provided in the request to schedule a second mediation, San Leandro asserts no explanation was necessary because the explanation was verbally provided to OAH's case manager prior to cancellation. Specifically, San Leandro asserts that upon seeing the assigned mediator on OAH's calendar, counsel called the case manager and requested a new mediator be assigned. The case manager informed counsel that a new mediator could not be assigned because mediator assignments are made based on availability. The case manager confirmed that the parties had the right to cancel the mediation. San Leandro asserts that, "District's counsel had no choice but to cancel the mediation and attempt to file a Joint Request to schedule a new mediation date with a new mediator." San Leandro explains that, "District believed that verbal explanation of the circumstances was sufficient to show good cause, and the case manager did not indicate to Counsel that an explanation of good cause was required with a subsequent request to reschedule the mediation."

In light of the newly revealed facts discussed above, reconsideration is GRANTED.

Request for Second Mediation

Mediation is a critically important part of the special education due process hearing system. The Legislature declared in Education Code section 56500.3, subdivision (a), its intent, "that parties to special education disputes be encouraged to seek resolution through mediation prior to filing a request for a due process hearing." To effectuate this declaration, the law specifies that, "[p]ursuant to Section 300.506(b)(4) of Title 34 of the Code of Federal Regulations , and to encourage the use of mediation, the state shall bear the cost of the mediation process, including any meetings described in Section 300.506(b)(2) of Title 34 of the Code of Federal Regulations." (Educ. Code § 56500.3, subd. (e).)

San Leandro's explanation for not including good cause for requesting a second mediation in its request for a second mediation is implausible. Essentially, San Leandro asserts that in reaching a ruling on a written motion, an ALJ should consider verbal statements made by one party to a case manager. Doing so would constitute impermissible ex-parte communication and is ethically prohibited. As with all other motions and applications, good cause is determined by a judge.

Further, San Leandro asserts that the case manager failed to inform counsel of the need to establish good cause for requesting a second mediation. The Mediation and Due Process Hearing Information Packet which was served on the parties on September 25, 2018, as an attachment to the scheduling order states, "[p]arties should carefully choose the day for mediation. Requests to cancel mediation without a good reason, may result in a denial of a

subsequent request for mediation." Accordingly, it was not OAH's case manager's obligation to re-inform counsel of this requirement.

OAH encourages parties to resolve their disputes through mediation and liberally permits parties to select mediation dates whenever possible. In this matter, OAH scheduled the mediation on the date selected by the parties. Extensive effort and resources are devoted to ensuring that mediations and due process hearings are scheduled in all locations throughout California. The law provides that each party is entitled one peremptory challenge for an Administrative Law Judge assigned to a due process hearing. No such provision exists for mediators. Scheduling mediators in every region of the State, while efficiently utilizing financial resources, is complex and difficult. OAH's operational needs do not permit parties to cancel and reschedule mediations to obtain their desired mediator.

OAH has fulfilled its obligation to make mediation available to parties. At this juncture, the parties have not provided sufficient cause to warrant that an additional mediation day be assigned. The joint request to schedule another mediation is DENIED.

IT IS SO ORDERED.

DATE: October 26, 2018

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Joy Redmon
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JOY REDMON
Presiding Administrative Law Judge
Office of Administrative Hearings