BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024010943

ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING REQUEST FOR CONTINUANCE

MAY 23, 2024

On May 15, 2024, the undersigned Administrative Law Judge, called an ALJ, issued an order granting the parties' second joint request for a continuance of the hearing because the attorneys for both parties were already scheduled to be in another hearing on the same dates. The ALJ continued the hearing in this case to June 18 through 20, 2024, instead of the requested dates of July 30 through August 1, 2024, because based on the papers submitted, both parties and their counsel were available that week.

On May 21, 2024, Student filed a motion for reconsideration again requesting that the hearing be continued to July 30 to August 1, 2024. Student argues that her

counsel has another hearing in an older matter June 18 through 20, 2024, that has twice been continued, which counsel inadvertently did not include in the prior motion's list of unavailable dates. On May 21, 2024, District filed a notice of non-opposition.

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 offers new facts, circumstances, or law. to support reconsideration, *i.e.*, that Student's attorney has another hearing scheduled June 18 through 20, 2024 in an older filed matter. The motion for reconsideration is granted.

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

On reconsideration, the request for a further continuance is granted. Student's counsel has a conflicting hearing on June 18 through 20, 2024, in an older matter where OAH has made it clear that further continuances were unlikely. However, counsel has still failed to justify the length of the requested continuance. The original papers included a list of conflicting hearings. The fact that Student or District has conflicting hearings in more recently filed matters is not good cause for a longer continuance in this case. This case has been pending since January 2024. Hearing dates in older filed matters take priority over those scheduled in more recently filed cases. Accordingly, the new dates are:

PREHEARING CONFERENCE will be held on July 1, 2024, 1:00 PM. The parties are ordered to file new prehearing conference statements clarifying the issues as directed in the Order Following Prehearing Conference dated May 10, 2024.

DUE PROCESS HEARING will be held on July 9 through 11, 2024.

The prehearing conference, and due process hearing will be held by videoconference or telephone, unless otherwise ordered. The due process hearing will begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, Mondays and Fridays included, at the discretion of the Administrative Law Judge.

Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference. Late motions will only be considered if good cause is established for the late filing.

PARTICIPANT INFORMATION SHEETS FOR PREHEARING CONFERENCES MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT. ANY

CHANGES TO THE PARTICIPANTS' EMAIL ADDRESSES PROVIDED BY THE PARTIES IN THEIR REQUEST MUST BE FILED TWO BUSINESS DAYS BEFORE THE SCHEDULED EVENT.

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings