BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021020698

ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING REQUEST FOR CONTINUANCE

APRIL 2, 2021

On April 1, 2021, the undersigned Administrative Law Judge issued an order denying San Jose Unified School District's request for continuance of the due process hearing in this matter. On April 2, 2021, San Jose filed a request for reconsideration asserting that its counsel, Jeffery Maisen, was lead counsel in an earlier-filed case that had dates conflicting with the present matter. On April 2, 2021, Student filed an 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.)

MOTION FOR RECONSIDERATION

San Jose requests the undersigned ALJ take judicial notice of a prehearing conference statement filed with the Office of Administrative Hearings, called OAH, by San Jose which lists Jeffery Maisen as attorney of record. San Jose argues this supports its request for a continuance, on the grounds that the signed prehearing conference statement demonstrates his position as lead counsel on the earlier filed case. As lead counsel, San Jose argues, its counsel has two cases scheduled for hearing on the same dates. As the other is an earlier filed case, San Jose requests that this case be continued. The motion for reconsideration is granted.

REQUEST FOR CONTINUANCE

On reconsideration, the undersigned ALJ reviewed all documents filed with OAH and found no prehearing conference statement in either OAH case number 2020070344 or 2020110384, signed by Mr. Maisen. Mr. Maisen did not provide the date of the alleged prehearing conference statement referred to in support of the request for reconsideration. The only evidence of Mr. Maisen's involvement the earlier filed case,

was an appearance on behalf of San Jose at a January 4, 2021 prehearing conference. In the order following the January 4, 2021 prehearing conference in OAH Case No, 2020110384, Ms. Eliza McArthur is specifically identified by the Administrative Law Judge conducting the prehearing conference as lead counsel for San Jose.

ORDER

San Jose failed to establish that it's counsel has a conflict for the dates currently scheduled for hearing. Having reconsidered the April 1, 2021 order in light of further argument by the parties, no change is made to the order previously issued. San Jose's request for continuance is denied. All dates set in this matter are confirmed.

IT IS SO ORDERED.

Rita Defilippis

Rita Defilippis
Administrative Law Judge
Office of Administrative Hearings