BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

IQ ACADEMIES OF CALIFORNIA - LOS ANGELES.

OAH CASE NUMBER 2022100814

ORDER DENYING JOINT REQUEST FOR RECONSIDERATION

NOVEMBER 30, 2022

On October 27, 2022, Parent on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings naming IQ Academies of California – Los Angeles. The Office of Administrative Hearings is called OAH. IQ Academies of California – Los Angeles is called IQ Academies The prehearing conference is scheduled for December 2, 2022, and the due process hearing is scheduled for December 20, 21, and 22, 2022.

On November 17, 2022, the undersigned Administrative Law Judge issued an Order Denying Joint Request for Videoconference Mediation and Continuance of Due Process Hearing on the grounds the proposed dates prevented a timely due process

hearing and resolution of Student's issues. The parties' requested mediation date was more than three months after the filing date of the complaint. The requested continued due process hearing dates were more than five months after the complaint's filing date. OAH's November 17, 2022 Order stated the parties could file a new request with earlier proposed dates.

On November 28, 2022, the parties filed a Joint Motion to Continue Due Process Hearing Dates for Good Cause. The motion seeks a reconsideration of the November 17, 2022 Order, and therefore is treated as a motion for reconsideration.

APPLICABLE LAW

OAH 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 10 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.)

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 as a result of which the case 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).)

DISCUSSION

The parties' renewed request for continuance fails to state any new or different facts, circumstances, or law justifying reconsideration. The November 17, 2022 request for continuance indicated the parties have "heavily impacted calendars" and school closure for the winter break. In their motion for reconsideration, the parties fail to provide proposed mediation and due process hearings dates earlier than the dates requested in the November 17, 2022 continuance request as directed by OAH's November 17, 2022 Order.

Witness unavailability during the winter break does not constitute grounds for a continuance as the Individuals with Disabilities Education Act does not provide due process hearings are suspended during school breaks. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.) IQ Academies asserts its witnesses are unavailable during the winter break due to the holidays and family travel but fails to provide specific facts establishing any particular essential witness is unavailable during the December 20, 21, and 22, 2022 due process hearing dates. As a result, the motion for reconsideration fails

to state new or different facts which establish good cause for reconsideration of the November 17, 2022 Order.

Further, the fact IQ Academies' attorney of record has numerous cases scheduled for hearing with OAH during the months of January through March 2023, does not constitute good cause for a continuance as it is premature to ascertain the disposition of those cases. The parties' renewed request to schedule the due process hearing over five months after the complaint's filing date is unreasonable and disregards the November 17, 2022 Order.

For these reasons, the parties' joint request for reconsideration is denied. The parties may file a renewed request with earlier mediation and due process hearing dates as stated in the November 17, 2022 Order.

ORDER

1. The parties' motion for reconsideration is denied.

2. All dates set in this matter are confirmed.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings