BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT AND CRESCENT VIEW WEST PUBLIC CHARTER SCHOOL.

OAH CASE NUMBER 2023020131

ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING MOTION TO CONTINUE DUE PROCESS HEARING AS TO CLOVIS UNIFIED SCHOOL DISTRICT ONLY

MARCH 21, 2023

On March 21, 2023, the Division Chief Administrative Law Judge issued a Notice of Dismissal of Expedited Issues; Order vacating Non-Expedited Dates as To Clovis Unified School District Only that vacated all hearing dates for Clovis and informed the parties that the matter will be dismissed as to Clovis 30-days after the scheduled board meeting. On March 21, 2023, Student filed a Request for Reconsideration of OAH Order on Dismissal. The Office of Administrative Hearings did not receive a response from Clovis Unified or Crescent View West Public Charter School.

APPLICABLE LAW

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, 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.)

REQUEST FOR CONTINUANCE

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

Student offers new facts, circumstances or law to support reconsideration. On March 21, 2023, Student filed a Request to Dismiss Expedited Issues Without Prejudice and Notice of Settlement of Expedited and Unexpedited Claims and Request to Take Unexpedited Hearing Against Clovis Unified School District Off Calendar. Student's notice informed OAH that he and Clovis reached a global agreement that settled all claims. Additionally, the final settlement is contingent upon Clovis' Board approval at a meeting scheduled for March 29, 2023, and approval of a minor's compromise by the Superior Court of California. Student points out that OAH's order of March 21, 2023, misstated that the settlement was contingent on only board approval; however, it is contingent on both board approval and approval of a minor's compromise. Student asserts that he will be unable to obtain a minor's compromise order within 30 days of Clovis' board approval. Student contends that the Superior Court is backlogged and it will likely take months for Student to obtain a minor's compromise order. Student requests that the non-expedited hearing remain off calendar for at least three months and Student will inform OAH of the status of the hearing and or the minor's compromise at that time. The motion for reconsideration is granted.

Typically, when the parties enter into a settlement agreement pending the school board's approval, OAH will dismiss the matter 30 days after the scheduled board meeting. Here, Student has requested to schedule the prehearing conference and due process hearing approximately three months after the scheduled board meeting so

Student may obtain approval from the Superior Court for the minor's compromise order. Student established good cause to continue of the non-expedited prehearing conference and due process hearing to obtain approval of the minor's compromise. Student's request for continuance is granted.

Should the minor's compromise order be approved sooner than the dates scheduled for prehearing conference and due process hearing, the parties may request for OAH to dismiss the scheduled hearings.

ORDER

1. On reconsideration, the March 21, 2023, Notice of Dismissal of Expedited Issues; Order Vacating Non-Expedited dates as to Clovis Unified School District Only is vacated as to the non-expedited dates only.
2. The Dismissal of Expedited Issues remains in effect.
3. Student's Motion to Continue the non-expedited prehearing conference and due process hearing as to Clovis is granted.
4. The non-expedited prehearing conference for Student and Clovis Unified School District will be held on July 10, 2023, at 3:00 PM and due process hearing: July 18, 2023, through July 20, 2023.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings