BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

DESIGN TECH HIGH SCHOOL.

OAH CASE NUMBER 2019060785

ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING REQUEST FOR CONTINUANCE

On July 30, 2019, the undersigned Administrative Law Judge issued an order denying Design Tech High School's Request for Continuance. On July 31, 2019, Design Tech filed a Request for Reconsideration. As of the time of issuing this Order, Student has not filed a response.

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.)

GROUNDS 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

Design Tech alleges new facts and circumstances in support of its request for reconsideration, namely that its counsel is unavailable for hearing in this matter because of a conflicting *expedited* due process hearing scheduled for the same dates. The fact that counsel's conflicting hearing scheduled involved an expedited matter was not asserted in its initial continuance request. As such, the motion for reconsideration is granted.

Design Tech is correct that an expedited due process hearing, even though the expedited matter was filed after the date Student filed his complaint in this case, takes precedence over the hearing scheduled for this matter. On reconsideration, the unavailability of Design Tech's counsel because of a conflicting expedited due process hearing constitutes good cause to continue this matter. Deign Tech's request for continuance is granted.

Design Tech requests that this matter be continued to the end of September 2019. Design Tech has not established good cause to continue this matter for the length of time requested.

ORDER

1. Design Tech's request for reconsideration is granted.
2. On reconsideration of Design Tech's motion for continuance, the request to continue all pending dates is granted.
3. All pending dates are vacated. The prehearing conference will be held on Monday, August 19, 2019, at 10:00 a.m. The due process hearing will be held on August 27, 2019, at 9:30 a.m., August 28-29, 2019, at 9:00 a.m.,

and continue day to day as needed, at the discretion of the administrative law judge.

4. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not timely filed.

IT IS SO ORDERED.

DATED: August 1, 2019

DocuSigned by:
Theresa Ravandi
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Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings