BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023070944

ORDER GRANTING REQUEST FOR RECONSIDERATION BUT CONFIRMING RULING

AUGUST 18, 2023

On August 11, 2023, shortly before a prehearing conference, Student filed a request that the undersigned ALJ be reassigned. The ground was that the ALJ was the mediator in Case No. 2022080880, a different matter involving Student. Student asserted in the motion that the ALJ would therefore have "pre-existing knowledge" of the "facts and circumstances relevant" to this matter.

On August 11, 2023, the undersigned Administrative Law Judge issued an Order Following Prehearing Conference in this matter, which included a ruling denying Student's request for reassignment on the ground that he did not remember anything about that previous mediation and therefore could not be tainted by pre-existing

knowledge. (Order Following Prehearing Conference, Aug. 11, 2023, p. 10.) On May 16, 2023, Student requested that the ALJ reconsider that ruling.

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

The only claim in the request for reconsideration that was not previously made in the August 11, 2023 request for reassignment is the assertion that Parents view this matter as the continuation of and inextricably intertwined with their ongoing litigation against the District. They assert that the ALJ assured them during the mediation in Case No. 2022080880 that if that due process request went to hearing, another judge would hear the case.

This new assertion supports reconsideration of the ruling, which is granted.

Although the ALJ does not remember that particular advisement, the ALJ routinely assures Parents in mediations that he will not be the judge who hears that case. However, that assurance does not extend to different cases, and Parents in their motion to reconsider do not claim that the assurance was made about any case except Case No. 2022080880. However Parents may characterize the relationship between the

two due process cases, the ALJ did not assure Parents that he would not be the hearing judge in a different case. Additionally, the fact remains that the undersigned has mediated hundreds, if not thousands, of due process matters and has no memory of the facts regarding this Student or the prior dispute among the parties. The ruling declining the request for reassignment in the August 11, 2023 Order Following Prehearing Conference is confirmed.

ORDER

1. Student's motion for reconsideration of the August 11, 2023 ruling declining reassignment is granted.
2. Student's request for reassignment is again denied.

Charles Marson

Charles Marson
Administrative Law Judge
Office of Administrative Hearings