BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

PALMDALE SCHOOL DISTRICT.

OAH CASE NUMBER 2019070223

ORDER DENYING REQUEST FOR RECONSIDERATION AND ORDER GRANTING REQUEST FOR CONTINUANCE

On November 5, 2019, the undersigned Administrative Law Judge issued an order that granted Student's request to reopen the case as the school board of Palmdale School District did not adopt the settlement agreement between the parties. On November 8, 2019, Palmdale filed a Motion to Reconsider the Reopening Case or Request for Continuance. On November 12, 2019, Student filed an opposition to the reconsideration request, and a non-opposition to the continuance request.

APPLICABLE LAW

RECONSIDERATION

The Office of Administrative Hearings, referred to as 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 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.)

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

RECONSIDERATION

Palmdale did not establish cause to reconsider OAH's November 5, 2019 Order to Reopen Student's Case as Palmdale did not establish why it did not respond to Student's motion with the information in its Motion for Reconsideration. While Student's attorney should have requested that OAH reopen the case before the October 3, 2019 dismissal order, that is not sufficient cause for OAH to reconsider its order to reopen this case. Further, the information in Palmdale's reconsideration motion that Student will not prevail as Student is no longer subject to discipline and suffered no harm is a factual and legal dispute for hearing.

CONTINUANCE

Palmdale's request for continuance of the PHC is granted for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

Prehearing Conference: December 6, 2019, at 10:00 AM

All other prehearing matters shall be addressed at the December 6, 2019 Prehearing Conference. All prehearing motions must be filed three business days before the Prehearing Conference.

Due Process Hearing: December 17 through 19, 2019.

The hearing shall begin at 9:30 AM on the first day of the hearing and at 9:00 AM on all other days, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

ORDER

1. Palmdale has not established that the November 5, 2019 Order should be reconsidered. The motion for reconsideration is denied.
2. Palmdale's request to continue this matter is granted.

IT IS SO ORDERED.

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Peter Paul Castillo
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DATED: November 12, 2019

Peter Paul Castillo
Presiding Administrative Law Judge
Office of Administrative Hearings