BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2019060216

ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING CONTINUANCE OF DUE PROCESS HEARING

MAY 22, 2020

On May 18, 2020, the undersigned Administrative Law Judge issued an Order Following Prehearing Conference denying Student's motion to continue the prehearing conference and due process hearing in this matter. On May 18, 2020, Student filed an amended motion to continue due process hearing, which is treated here as a request for reconsideration of Student's motion to continue. On May 21, 2020, William S. Hart Union High School District, referred to as Hart, filed an opposition to Student's motion.

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

Student offers new facts, circumstances or law to support reconsideration of her request for a continuance, and her motion for reconsideration is granted. Student made her continuance request on grounds that Father was unable to attend and testify at Student's hearing on its existing dates because he is an essential government worker in a law enforcement division on tactical alert, required to work on the existing dates, and with no control over his schedule until the COVID-19 pandemic subsides. Father attended the single day of hearing held January 22, 2020, and the sincerity of Father's desire to attend and testify at hearing is not disputed. Student's request for a continuance was denied primarily because Student could provide no future dates to which the hearing could be continued on which it was certain Father could attend. In his declaration in support of Student's motion Father states he now will be allowed to schedule time off to attend a hearing on June 23 and 24, 2020, or July 2 and 3, 2020.

ORDER

On reconsideration, Student's request to continue the hearing dates in this matter is granted.

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).)

Student has established good cause for a continuance. Father's previous unavailability was due to circumstances beyond his control, arising from his job providing essential services in the public interest. In the previous Order Following Prehearing Conference, the matter was set for hearing on two days Father could not

attend, with the parties to discuss at hearing an additional partial hearing day to take Father's testimony. Continuing the hearing to two specific dates on which Father can attend and testify serves the interests of justice by eliminating uncertainty whether and when Father will be able to testify, or whether Student's case would be prejudiced if he did not, and by reducing the number of hearing days and simplifying the scheduling of Father's testimony.

Hart contends it would be prejudiced by a continuance of the due process hearing because its staff will be generally unavailable to attend the hearing during Hart's summer break. However, the 45-day timeline for due process hearings is not tolled for summer recess, and the general unavailability of school staff during that time does not constitute prejudice. Hart has not identified any particular witness as unavailable, and both parties may subpoena Hart employees to testify.

DUE PROCESS HEARING

The hearing will take place by videoconference on June 23 and 24, 2020, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered.

OAH will issue a separate Order Setting Procedures for Filing Exhibits Electronically that includes instructions for how to file exhibits electronically using the CaseLines electronic filing system.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered a showing good cause to continue the hearing.

IT IS SO ORDERED.

DocuSigned by:

Robert G. Martin

F77DE57DCC0E437...

Administrative Law Judge

Office of Administrative Hearings