BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023040749

ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING JOINT REQUEST FOR CONTINUANCE

AUGUST 29, 2023

On August 24, 2023, the Office of Administrative Hearings, referred to as OAH, issued an order denying the parties' joint request for a continuance on the basis that the parties did not establish good cause. On August 25, 2023, the parties participated in a lengthy prehearing conference and offered oral arguments in support of a motion for reconsideration as well as further details supporting the request for a continuance due to the circumstances of the case. On August 28, 2023, the parties filed a joint request for reconsideration of the order denying the request for continuance.

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.)

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); Ed. Code, §§ 56503, 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; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See 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; and
- any other relevant fact or circumstance.

(See Cal. Rules of Court, rule 3.1332(d).)

REQUEST FOR RECONSIDERATION

The parties offered new facts and circumstances to support reconsideration. While the original request for a continuance was short and did not show good cause for a second continuance in this matter, the detailed joint request for reconsideration and two-hour discussion at the prehearing conference provided new facts and circumstances supporting the request. The parties explained that during summer 2023, Student attended a compensatory education program in Massachusetts funded by San Francisco in an interim settlement agreement. The parties needed to meet after the summer program to discuss the program's efficacy before they could finalize settlement discussions in this matter, as the program was expensive and required a substantial investment of public funds.

The parties also explained that several necessary individuals were unavailable to mediate the matter from June through August 2023, including Parents, who were in Massachusetts with Student. The parties desired to mediate the matter and believed they could reach a full resolution of the matter but needed additional time prior to the scheduled hearing dates of September 6 and 7, 2023, to participate in further mediation.

The parties also explained in further detail why neither party would be prejudiced by a continuance to continue mediating the matter. Student is attending a placement within San Francisco for the 2023-2024 school year, and the parties agree there is no prejudice to either party while they mediate and work to resolve the dispute. Finally, the parties explained in great detail other relevant facts, such as the complexity of the case, which is also being resolved alongside another case involving a different student within San Francisco. The parties agree that a hearing in the matter would take four to six

weeks, involve around 50 witnesses, and include thousands of pages of documents. Based on the new facts and circumstances, the motion for reconsideration is granted.

REQUEST FOR CONTINUANCE

The parties have established good cause for a continuance. First, the parties were unavailable to prepare for hearing or continue discussing resolution of the case during the summer, because Parents were in Massachusetts with Student while he attended a compensatory education program. The parties stipulated to a continuance, and agreed neither party would be prejudiced by the delay requested. Finally, a continuance in this matter is in the interest of justice, because the parties believe that the additional mediation they are scheduled to attend will completely resolve a complex case that would otherwise involve significant resources from the parties and OAH.

ORDER

On reconsideration, the parties joint request for a continuance is granted. The current due process hearing dates are vacated. The matter will be set as follows:

PREHEARING CONFERENCE shall take place at 1:00 PM on November 17, 2023.

DUE PROCESS HEARING shall take place on November 28, 2023, through November 30, 2023.

PARTICIPANT INFORMATION SHEETS FOR THE PREHEARING CONFERENCE AND DUE PROCESS HEARING MUST BE FILED TWO BUSINESS DAYS BEFORE THE SCHEDULED EVENT.

The hearing will begin at 9:30 AM on all days unless otherwise ordered. The hearing will continue day to day, as needed at the discretion of the Administrative Law

Judge. 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.

Cararea Lucier

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings