BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SAN MATEO FOSTER CITY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016080764 ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING REQUEST FOR CONTINUANCE OF MEDIATION, PREHEARING CONFERENCE, AND HEARING DATES

On September 23, 2016, the undersigned administrative law judge issued an order granting in part and denying in part the parties' joint request for continuance of the mediation, prehearing conference[1], and hearing dates. On September 27, 2016, Student filed a request for reconsideration on behalf of Student.

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. (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) (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

[1] The parties did not expressly request a continuance of the PHC in their request for continuance. However, they did request a continuance of the mediation and hearing dates; therefore, it was reasonably inferred that they also requested a continuance of the PHC date.

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 continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

DISCUSSION

Reconsideration

Student alleges new facts in support of his request for reconsideration. In Student's request for reconsideration, Student's advocate represents that Parent is unavailable on October 4, 2014, the currently set mediation date, because she will be traveling by airplane for a business trip at the time set for mediation.[2]The request is timely.

Accordingly, Student's request for reconsideration is granted.

Joint Request for Continuance

The parties requested a continuance of the previously set mediation date from September 29, 2016, to October 18, 2016. The continuance request is based on the unavailability of San Mateo-Foster City's counsel, San Mateo-Foster City's Director of Special Education, and many members of the special education staff on September 29, 2016. The September 23, 2016 order explains the reason this fact alone does not establish good cause to continue the mediation to the date requested by the parties. The matter was continued to October 4, 2016, pursuant to the September 23, 2016 order.

In Student's motion for reconsideration, Student's advocate represents that Parent is not available on October 4, 2016, and renews the parties' request that the mediation be continued to October 18, 2016, and the hearing be continued to a time after the October 18, 2016 mediation.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Good cause exists to continue all currently set dates.

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[2] The request for reconsideration is not accompanied by a sworn declaration from Parent establishing the facts relating to her business trip. Because the motion to be reconsidered is a joint motion, OAH will rule on the request for reconsideration without a supporting sworn declaration. However, going forward, any similar motions will not be considered without a sworn declaration establishing the facts supporting the motion.

ORDER

1. Student's motion for reconsideration is granted.

2. Based on reconsideration of the parties' request for continuance of the mediation, PHC, and hearing dates, the parties' continuance request is granted.

3. All dates are vacated.

4. The matter will be set as follows:

   Mediation: October 18, 2016, at 9:30 a.m.

   Prehearing Conference: November 4, 2016, at 1:00 p.m.

   Due Process Hearing: November 15, November 16, November 17, 2016, beginning at 9:30 a.m., on the first day of hearing, and 9:30 a.m., on all subsequent dates. The hearing will continue day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

5. The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: September 29, 2016

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DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings