BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: MORENO VALLEY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016100339 ORDER GRANTING REQUEST FOR RECONSIDERATION, GRANTING MOTION TO AMEND, AND GRANTING CONTINUANCE

On November 7, 2016, the undersigned administrative law judge issued an order denying Moreno Valley Unified School District's request to amend its complaint without prejudice on the grounds that District had not submitted a proposed amended complaint with its motion. On November 8, 2016, District filed a request for reconsideration and another motion to amend and request for continuance. Student did not file any response to either the request for reconsideration or the new motion to amend and request for continuance.

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.)

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii).)

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. (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

District's request for reconsideration asserts that District filed a proposed amended complaint with its original motion to amend and District submitted evidence demonstrating that a proposed amended complaint had in fact been included in its original e-filing. Based on the information provided in District's request for reconsideration, OAH investigated the e-filing system and discovered the proposed amended complaint had been received along with the original motion to amend, but it had not been processed and therefore was not available to the ALJ to be considered with District's original motion to amend.

Accordingly, District's request for reconsideration is granted.

Motion to Amend and Request for Continuance

On reconsideration, the motion to amend is timely and is granted to include allegations regarding the May 2016 psychoeducational and one-to-one aide assessments District conducted and the issue of whether they were appropriate, such that Student is not entitled to independent educational evaluations in those areas at public expense. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order.

District's motion to amend included a request for continuance to have the due process hearing proceed on dates that had already been agreed upon between the parties to accommodate Parent's schedule and ordered during the prehearing conference of October 24, 2016. OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is granted. This matter will be set as follows:

Mediation:	The parties may submit a written request to OAH for a mediation date, if they wish to mediate.

Prehearing Conference:	December 2, 2016, at 10:00 AM
Due Process Hearing:	December 13, 2016, at 9:30 AM, and December 14 and 15, 2016, at 9:00 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

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.

ORDER

1. District's motion for reconsideration is granted.

2. Based on reconsideration of District's motion to amend and request for continuance, District's motion to amend and request for continuance are granted.

3. District's second motion to amend and request for continuance are denied as moot.

DATE: November 15, 2016

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Kara Hatfield
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KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings