BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018090669
v.	ORDER DENYING REQUEST FOR RECONSIDERATION
LONG BEACH UNIFIED SCHOOL DISTRICT.	

At a November 5, 2018 prehearing conference before the Office of Administrative Hearings, the undersigned administrative law judge heard argument on the motion of Long Beach Unified School District, filed October 30, 2018, to continue the hearing date in this matter from November 14, 2018 until February 19, 2019. The motion was made on grounds that Long Beach's counsel Sundee Johnson of the law firm Atkinson, Andelson, Loya, Ruud & Romo, had conflicting mediations and hearings with OAH, or District personnel were unavailable during school breaks, until February 19, 2019. ALJ Martin denied the motion on grounds that the proposed 97-day delay of the hearing was prejudicial to Student, and unreasonable, where one or more of the 15 conflicting matters affecting the availability of Long Beach's counsel was likely to resolve or be continued. On November 6, 2018, Long Beach filed a motion for reconsideration, and later the same day, a revised motion for reconsideration (referred to in this Order as the "motion for reconsideration). Student filed an opposition on November 7, 2018.

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.)

DISCUSSION

Long Beach alleges no new facts sufficient to support reconsideration of OAH's November 5, 2018 order denying its request for a continuance to February 19, 2019.

On October 30, 2018, Long Beach moved to continue the PHC and hearing of this matter on grounds that its counsel, Ms. Johnson, was scheduled to be in hearing in an earlier filed matter, OAH Case no. 2018071193. The motion included a list of hearings, mediations,

school breaks, and other scheduled matters allegedly precluding a continuance of this matter to any date earlier than February 19, 2019. The listed matters included a December 11-13, 2018 hearing involving Ms. Johnson, in OAH Case no. 2018071039.

On November 1, 2018, Case no. 2018071039 settled at mediation. On November 2, 2018, the student filed and served a notice of dismissal.

On November 5, 2018, at the PHC for Case no. 2018071193, the parent, and Long Beach represented by Atkinson, requested and were granted a continuance of the PHC, based on representations that the case was close to reaching a resolution.

Also on November 5, 2018, in Case no. 2018070073, Long Beach filed a response to the student's request for a continuance, stating that Long Beach was available for hearing on November 13-15, 2018. Atkinson does not represent Long Beach in that matter.

Also on November 5, 2018, at the PHC in Case no. 2018051105, hearing was set for November 15, 16, 19, 20 and 21. Long Beach is represented by Atkinson attorneys other than Ms. Johnson in that matter. OAH had previously continued that matter on July 17, 2018, setting it for hearing on November 13, 14 and 15, 2018.

At the November 5, 2018 PHC in this matter, Long Beach's Atkinson counsel confirmed on the record that all conflicts listed in Long Beach's October 30, 2018 motion to continue remained applicable. This was not correct with respect to Case no. 2018071039, which had been settled and dismissed, and arguable with respect to Case no. 2018071193, in which Atkinson on November 5, 2018 obtained a continuance on grounds the case was close to reaching a resolution.

On November 8, 2018, Ms. Johnson, on behalf of Long Beach, withdrew Case no. 2018071193.

Long Beach's motion for reconsideration is based on the following allegedly new facts regarding Long Beach's hearing calendar that Atkinson "did not have before the filing of the October 30, 2018 Motion to Continue": (1) OAH continued Case no. 2018070073 to November 14, 2018; and (2) Long Beach is scheduled to commence hearing in Case no. 2018051105 from November 13-15 and November 20-21, 2018. The motion omits to state whether Atkinson had this information on November 5, 2018, during the discussion of the motion to continue at the PHC.

The reconsideration motion does not mention Case no. 2018071193, which Atkinson represented was close to reaching a resolution on November 5, 2018, and withdrew on November 8, 2018. Also, the list of conflicts included in the reconsideration motion deletes the original motion's prior reference to Case no. 2018071039 as presenting a conflict for Ms. Johnson on December 11-13, 2018, and replaces it with a reference to Case no. 2018070037, stating that "District is in hearing" in that matter on December 11-13, 2018. Atkinson attorneys other than Ms. Johnson are lead counsel in that matter, in which the parties on

September 10, 2018 jointly requested, and were granted, a continuance of the hearing to December 11-13, 2018.

The text of Long Beach's motion for reconsideration and supporting declaration do not reference or explain the pending resolution of Case no. 2018071193, or the deletion of Case no. 2018071039 from the list of alleged conflicts, and its replacement with Case no. 2018070037. The motion for reconsideration also does not explain Long Beach's failure to previously provide the allegedly new fact that Case no. 2018051105 is set for hearing commencing November 15, 2018, when that date was set on September 10, 2018, and Atkinson represents Long Beach in that matter. Finally, the motion for reconsideration does not explain Long Beach's representation in Case no. 2018070073 that it was available for hearing on November 13-15, 2018. Although Long Beach is represented by a different law firm in that matter, it was aware of this case and Case no. 2018051105, and did not indicate that it would be unable to participate in another hearing November 13-15, 2018.

Long Beach's original motion to continue this matter was predicated on the dates of unavailability of Ms. Johnson, or of Long Beach employees during Thanksgiving and winter school breaks. The motion for reconsideration expands the grounds for continuance to include periods in which Long Beach is in hearing with attorneys other than Ms. Johnson, but does not contend that Long Beach employees would be unable to schedule time to participate in the hearing of this matter during those periods. Also, the allegedly conflicting dates are not new information, but were known to Long Beach prior to consideration of the motion to continue at the November 5, 2018 PHC. Finally, it appears that potential hearing dates earlier than Long Beach's requested date of February 19, 2018 were available, at least as of November 5, 2018.

ORDER

Long Beach's Motion for Reconsideration is denied. The denial is without prejudice to a renewed motion by Long Beach for a shorter continuance of the hearing date, or to a joint request by the parties to continue the matter to a date within 60 days of a mediation date selected by the parties.

IT IS SO ORDERED.

DATE: November 08, 2018

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ROBERT G. MARTIN
Administrative Law Judge
Office of Administrative Hearings