**BEFORE THE**
**OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF CALIFORNIA**

# IN THE MATTER OF:

# PARENT ON BEHALF OF STUDENT,

**v.**

# BELLFLOWER UNIFIED SCHOOL DISTRICT.

# OAH CASE NUMBER 2019040225

## ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING STUDENT'S CONTINUANCE REQUEST

On October 9, 2019, the Presiding Administrative Law Judge Peter Paul Castillo issued an order that denied Student's request for a continuance based upon the inability of Student's attorney to meet with Father to prepare him for hearing and the absence on a vital witness. On October 10, 2019, Student filed a Motion for Reconsideration, which included a declaration from Student's father as to his unavailability. On October 11, 2019, Bellflower Unified School District filed an opposition.

## 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 with the Declaration of Father as to his unavailability due to an important work contract that he is obligated contractually to fulfill. Without this Declaration, Student would not have established good cause for reconsideration based on the other two grounds as to the unavailability of a specified Bellflower general education teacher, and because Student has the incorrect date for the Great Shakeout. The motion for reconsideration is granted.

## CONTINUANCE REQUEST

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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Granted. All dates are vacated. The continuance request is granted as Student established good cause based on Father's inability to participate at the hearing due to significant work obligations. However, Student did not establish good cause to continue this matter for 60 to 70 days. Therefore, this matter will be set as follows:

Due Process Hearing will be held on December 3, 2019, through December 5, 2019. The hearing shall begin at 9:30 AM the first day, and at 9:00 AM on all other days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge. No further continuance will be granted as to the unavailability of Father or the Bellflower general education teacher. This matter shall take precedent over any later filed matter.

Bellflower's pending motion to dismiss the due process complaint and motion to exclude evidence will be ruled upon in a separate order.

## ORDER

1. Student's motion for reconsideration is granted.
2. On reconsideration, Student's continuance request is granted.

## IT IS SO ORDERED.

DocuSigned by:
Peter Paul Castillo
F0BCD8A6A62C4E9...

DATED: October 11, 2019

Peter Paul Castillo
Presiding Administrative Law Judge
Office of Administrative Hearings