BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

MOUNT DIABLO UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2019110034

and

MOUNT DIABLO UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2020030008

ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING CONTININUANCE

MAY 6, 2020

On May 5, 2020, the undersigned Administrative Law Judge issued an order denying the parties' joint request to continue this consolidated matter until August 25, 2020. On May 6, 2020, Student moved for reconsideration. The undersigned granted reconsideration and granted a brief continuance to June 23, 2020, for Mother to obtain childcare for Student. The same day, Mount Diablo moved for reconsideration of the May 5, 2020, order and also joined in Student's motion for reconsideration. Mount Diablo attached a declaration stating that its representative, Bryan Cassin, is sheltering in place with his two young children and therefore cannot participate in a due process hearing until the order is lifted and the school district physically reopens in August.

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

Based on the newly submitted declaration, the motion for reconsideration is granted.

MOTION TO CONTINUE

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).)

Although Mount Diablo's office may be closed to the public, the district did not represent that it was not providing education to students. Moreover, no federal or state law has tolled or suspended the state and federal timeline during the COVID-19 pandemic.

Childcare is not itself good cause for a continuance; particularly to support a continuance request extending the hearing to start on a consolidated matter in which one case would have been pending ten months. However, a brief continuance was granted to permit Mother to obtain childcare or make other arrangements for the due process hearing. In so doing, Mr. Cassin is provided the same opportunity. He is also

instructed to diligently and expeditiously make alternate arrangements. Additionally, it is noted that the brief continuance will be until mid-June, a time during which schools are traditionally not in session full-time. Further, nothing in this order prevents the parties from making requests for specific accommodations during the hearing should issues arise. If so, they will be considered by the ALJ presiding over the hearing.

ORDER

On reconsideration, no further continuance will be granted. The matter will proceed as currently ordered in Student's motion for reconsideration.

IT IS SO ORDERED.

DocuSigned by:
Joy Redmon
5155E4ECA68C4B1...

Joy Redmon
Presiding Administrative Law Judge
Office of Administrative Hearings