

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090809

ORDER GRANTING REQUEST FOR RECONSIDERATION,
GRANTING REQUEST FOR CONTINUANCE AND DENYING
NOVEMBER 9, 2021 REQUEST FOR
CONTINUANCE AS MOOT.

NOVEMBER 10, 2021

On September 27, 2021, Student filed a request for due process hearing with the Office of Administrative Hearings, referred to as OAH, naming Fremont Unified School District as respondent. On November 9, 2021, the parties jointly requested a continuance. No grounds for the request to continue the case were stated and the request for continuance was denied by the undersigned.

Later, on November 9, 2021, the parties again jointly requested a continuance, accompanied by an unsigned declaration from counsel for Fremont. A copy of the order denying the original continuance was filed separately, but not noted as an Exhibit. No motion for reconsideration noting the prior denial was included. On November 10, 2021, the parties jointly filed a second motion to continue, also with the unsigned declaration and, again without a request for reconsideration noting the prior continuance denial. The ground stated for the request was that the parties required more time to complete settlement discussions. No prior continuances have been granted in this case. Student is not represented by counsel.

REQUEST FOR RECONSIDERATION

The November 10, 2021 joint motion for continuance is being treated as a motion for reconsideration. 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.)

The unsigned declaration was not considered. However, facts stated in the moving papers by Fremont's counsel are accepted as representations of an officer of the court. It is recommended that future filings be reviewed closely for completeness and accuracy to avoid denial of requests.

The parties offer new facts to support reconsideration, specifically, that they mediated the case and are close to settlement. Therefore, reconsideration of the prior order denying the request for continuance is granted.

REQUEST FOR CONTINUANCE

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. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

A desire for more time to discuss settlement on its own does not constitute grounds for continuance. However, in this case, the undersigned takes notice that Student is not represented by an attorney, which could result in finalization of settlement documents taking longer. The request for a continuance is granted. All previously scheduled dates in this matter are hereby vacated. The new dates are:

PREHEARING CONFERENCE will be held on November 22, 2021, at 10:00 AM.

PARTICIPANT INFORMATION SHEETS FOR MEDIATION AND PREHEARING CONFERENCES MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

HEARING will be held on November 30, 2021, and December 1 and 2, 2021.

The hearing shall begin at 9:30 AM on all days unless otherwise ordered. After the scheduled dates, the hearing shall continue day to day, including Mondays and Fridays, as needed at the discretion of the Administrative Law Judge. Prehearing conference

statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why the document was not timely filed.

EARLIER FILED JOINT MOTION TO CONTINUE DENIED AS MOOT

The joint motion to continue, filed November 9, 2021, at 4:56 p.m. is denied, as the subsequently filed joint motion to continue rendered it moot.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings