

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022020066

ORDER GRANTING REQUEST FOR RECONSIDERATION;
ORDER GRANTING MEDIATION AND CONTINUANCE OF
DUE PROCESS HEARING

MARCH 9, 2022

On March 8, 2022, the undersigned Administrative Law Judge issued an order denying the parties' request to continue the due process hearing for failure to establish good cause for a continuance. On March 9, 2022, Parents on behalf of Student and Long Beach Unified School District filed a joint motion for reconsideration and offered facts to support the parties' request to continue the hearing.

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.)

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).)

DISCUSSION

The parties offered new facts, circumstances or law. to support reconsideration. The parties assert that good cause exists to continue the due process hearing as Student's counsel is not available for the hearing on the dates currently set. Student's counsel will be out of the country starting March 17, 2022, through April 5, 2022. Accordingly, the motion for reconsideration granted.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The joint request to continue the due process hearing is granted. The parties demonstrated good cause to continue this matter based on the unavailability of Student's counsel on the dates currently set for hearing. This is the first continuance in this matter. All dates are vacated. The matter will be set as follows:

Prehearing conference will be held on April 25, 2022, at 1:00 PM. The prehearing conference will occur by videoconference.

Due Process Hearing will be held on May 3, 4 and 5, 2022. The hearing will occur by videoconference. The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, 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 their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness.

Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings