

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SWEETWATER UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2024050496

ORDER FOLLOWING PREHEARING CONFERENCE FOR
HEARING BY VIDEOCONFERENCE GRANTING MOTION
FOR RECONSIDERATION AND GRANTING MOTION TO
CONTINUE

JUNE 24, 2024

On June 24, 2024, Administrative Law Judge Claire Yazigi, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Cecilia Rutherford, Attorney at Law, appeared on behalf of Student. Jennifer Carbuccia, Attorney at Law, appeared on behalf of Sweetwater Union High School

District. Sweetwater's Director of Special Education also attended PHC. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTION FOR RECONSIDERATION

On June 20, 2024, the parties jointly filed a motion to continue due process hearing on OAH's mediation request form, but did not request mediation or provide any other reason for the continuance request. The request was also not made at least three days prior to PHC as required by scheduling order. OAH denied the parties' request by written order served on the parties prior to PHC.

At PHC, the parties renewed their request for continuance, interpreted by the undersigned as a motion for reconsideration. OAH 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.)

At PHC, counsel demonstrated their misunderstanding regarding OAH's continuance request process. Counsel were unaware that a failure to request a mediation date on OAH's form entitled "Joint Request to Schedule a Mediation and Continue Hearing Dates" constituted a failure to establish good cause for continuance. Based on this fact, the parties' motion for reconsideration was granted.

MOTION TO CONTINUE

The parties were given an opportunity to establish good cause as to why their motion to continue should be heard, since it was filed less than three business days before PHC. The parties explained that Sweetwater was closed for the Juneteenth holiday, which fell on the third business day before PHC. This, compounded by a death in the family of Sweetwater's counsel's paralegal, caused the filing to occur the following day on June 20, 2024, which was two business days before PHC. Good cause existed to hear the parties' joint motion to continue.

The parties jointly requested that due process hearing be continued to accommodate an a.m. mediation on July 17, 2024. 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).)

Given that this is the first continuance and mediation requested by the parties, good cause exists to grant mediation and continue due process hearing.

Mediation is set for Wednesday, July 17, 2024, from 9:00 am to 12:30 pm.

Prehearing Conference is set for Friday, July 26, 2024, at 10:00 am.

Due Process Hearing is set for August 6, 7, and 8, 2024.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Claire Yazigi".

Claire Yazigi

Administrative Law Judge

Office of Administrative Hearings