

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024050520

ORDER FOLLOWING PREHEARING CONFERENCE
GRANTING REQUEST FOR RECONSIDERATION AND
CONTINUANCE

JUNE 17, 2024

On June 17, 2024, Administrative Law Judge Rita Defilippis, Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. Attorney Ryan Song appeared on behalf of Student. Attorney Marcy Gutierrez appeared on behalf of San Juan Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

REQUEST FOR RECONSIDERATION

On June 13, 2024, the undersigned Administrative Law Judge issued an order denying San Juan Unified School District's Motion to Continue the due process hearing in this matter. San Juan asserted that San Juan's counsel was unavailable to represent San Juan on the currently scheduled hearing dates. The undersigned ALJ's June 13, 2024, order denying the motion to continue found Attorney Tilman Heyer unavailable due to his being on paternity leave on the currently scheduled dates for hearing, but rejected San Juan's claim that attorney Gutierrez was unavailable due to the need for her representation at hearing in a separate, earlier filed OAH matter. The denial of the continuance found that Gutierrez was not needed for representation in the conflicting matter because an Attorney Green was available to represent the district in the conflicting hearing, as she was listed as counsel in the Order Following Prehearing Conference in that case.

On June 14, 2024, San Juan filed a Motion for Reconsideration of the undersigned ALJ's June 13, 2024, Order Denying San Juan's Motion for Continuance.

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

The Motion for Reconsideration was timely filed. San Juan offered new facts, supported by sworn declarations, to support the request for reconsideration. San Juan established that Attorney Gutierrez, and not Attorney Green, represented the district at the prehearing conference in the conflicting matter. San Juan further established that the Order Following Prehearing Conference in that matter documenting the district's representation otherwise, was a typographical error. San Juan established that Attorney Green is not an employee or contractor of Heyer Gutierrez LLP, nor does Attorney Green represent the district in the conflicting case or San Juan. As San Juan offered new facts, the Motion for Reconsideration is granted.

San Juan's Motion to Continue was discussed at the prehearing conference. Student opposed the request for continuance asserting Student's statutory right to an expeditious hearing.

The new information offered by San Juan establishes Attorney Gutierrez' unavailability to represent Student on the currently scheduled dates for hearing. Considering Student's Parent's three simultaneous due process filings for Student and two of Student's siblings, and the current hearing schedules for Student's siblings, San Juan's requested dates for the continued hearing in this matter are reasonable. Accordingly, upon reconsideration, San Juan's Motion to continue hearing is granted. All prior dates are vacated. The new dates are as follows.

PREHEARING CONFERENCE will be on August 19, 2024, at 10:00 AM.

All other prehearing matters shall be addressed at the August 19, 2024, prehearing conference. PARTICIPANT INFORMATION SHEETS FOR PREHEARING

CONFERENCES MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

DUE PROCESS HEARING will be held on August 27, 28, and 29, 2024.

The hearing will be conducted via telephone or videoconference and shall begin at 9:30 AM and end at 3:30 PM on all days, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ. 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 it was not timely filed.

SETTLEMENT

The parties shall immediately inform OAH in writing if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If the parties reach a settlement within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

If a full and final written settlement agreement is reached after 5:00 PM the day before the hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different

arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Rita Defilippis

Rita Defilippis

Administrative Law Judge

Office of Administrative Hearings