BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ORINDA UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017060787 ORDER GRANTING STUDENT'S REQUEST FOR RECONSIDERATION OF ORDER GRANTING ORINDA'S REQUEST FOR RECONSIDERATION AND GRANTING CONTINUANCE OF PREHEARING CONFERENCE AND HEARING

On June 28, 2017, Orinda Unified School District filed a Motion to Continue the due process hearing to October, 2017. Student did not file an opposition to Orinda's request for continuance. On July 3, 2017, the undersigned ALJ granted the request for continuance but ordered that the due process hearing be continued only one day, to July 12, 2017. On July 6, 2017, Orinda filed a Request for Reconsideration of the order to continue the hearing one day, asserting new information that Orinda's Counsel and Co-Counsel are unavailable on July 12, 2017, for hearing. On July 7, 2017, the undersigned ALJ issued an order granting Orinda's Request for Reconsideration and continuing the due process hearing to October 3, 2017. On July 7, 2017, Student filed a request to continue the prehearing conference and opposition to Orinda's request for reconsideration. Student asserted that Orinda did not establish good cause for the continuance of the hearing until October, 2017. The July 7, 2017 order granting Orinda's Request for Reconsideration did not consider Student's opposition to Orinda's Request for Reconsideration. The undersigned ALJ now considers Student's timely opposition to Orinda's Request for Reconsideration to be a Request for Reconsideration of the order granting Orinda's request for reconsideration and continuance of the due process hearing until October 3, 2017.

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. (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

Reconsideration

Student alleges in her July 7, 2017, opposition to Orinda's Request for Reconsideration, that the hearing was properly continued only one day, to July 12, 2017. Student alleges that Orinda's request to continue the hearing until October, 2017 is an unnecessary delay which will prejudice Student. On July 10, 2017, the undersigned ALJ erroneously noted in the order granting Orinda's Request for Reconsideration, that Student did not file an opposition to Orinda's Request for Reconsideration. Therefore, Student's timely opposition to Orinda's Request for reconsideration is now being considered and the undersigned ALJ is reconsidering the order granting Orinda's Request for Reconsideration and continuance of the due process hearing until October 3, 2017.

On reconsideration of Orinda's Request for Reconsideration and Student's opposition to Orinda's Request for Reconsideration, the undersigned ALJ finds good cause to continue the due process hearing to August 22 and 23, 2017, due to the unavailability of Orinda's counsel, co-counsel, Orinda's representative, and key witness in July and part of August. The prejudice to Student in continuing the due process hearing to October, 2017 outweighsthe purported reasons for unavailability of witness Amy Feldman the last two weeks of August, 2017, due to her beginning a new job. That does not necessarily mean she is unavailable as a witness on any of those days.

ORDER

Student's Request for Reconsideration of the undersigned ALJ's order granting Orinda's Request for Reconsideration is granted. After reconsideration, Orinda's Request is:

1 Granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference:	August 14, 2017, at 1:00 PM
Due Process Hearing:	August 22 and 23, 2017, continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The first day of hearing will begin at 9:30 AM. Thereafter, hearing will begin at 9:00 AM, unless otherwise determined by the ALJ.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify.

A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

IT IS SO ORDERED.

DATE: July 10, 2017

DocuSigned by:
Rita DeFilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings