BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BERKELEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018060684 ORDER GRANTING REQUEST FOR RECONSIDERATION

A due process hearing request was filed by Parents on behalf of Student naming Piedmont Unified School District and Berkeley Unified School District as respondents. On July 19, 2018 an order was issued granting the parties a requested mediation date of August 17, 2018 and continuing the hearing in the case to October 16, 2018. On August 16, 2018 mediation was cancelled with no explanation.

On October 1, 2017, the parties submitted a joint request to set mediation and continue their hearing based on a desire to mediate the case. No hearing or PHC dates had been chosen by the parties and no location was specified for mediation. The parties asked that OAH schedule the Prehearing Conference and Hearing dates. The request to set mediation and for a continuance in the case did not include an explanation as to why the parties cancelled the previously requested and scheduled mediation. The notice did not include any information regarding potential hearing conflicts.

On October 2, 2018, the undersigned administrative law judge issued an order setting mediation for all parties in the case to take place on October 10, 2018 and scheduling the Prehearing Conference for October 26, 2018.

On October 8, 2018, Berkeley Unified School District filed a motion for reconsideration asserting that they had requested a separate date for their mediation with Student and asking that their originally scheduled date of October 26, 2018 be scheduled. Counsel for Berkeley stated she was unavailable to attend a mediation on October 10, 2018 due to a scheduling conflict. This scheduling conflict had not been disclosed in the parties' October 1, 2018 request to set mediation. No opposition to the motion for reconsideration was received from Student.

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

The undersigned overlooked Berkeley's request for a separate mediation. Therefore, cause exists to reconsider the order scheduling the mediation, prehearing conference and hearing.

Mediation and Continuance Requests

OAH does not usually schedule separate mediations in multi-party cases a without a statement of good cause for the request. No such statement was included in the parties' request for mediation. Nor was any explanation as to why a second mediation should be scheduled when the first mediation scheduled was cancelled. While mediation is always preferred, unlimited resources for scheduling mediation when dates are cancelled without explanation are not available.

Berkeley's counsel did not inform OAH in her October 1, 2018 motion that she was unavailable to mediate on October 10, 2018. Berkeley should not have assumed an extraordinary request not only for a second mediation, when the first had been cancelled without explanation, but for separate mediations in this multi-party case would be granted. Berkeley now also seeks a continuance of Prehearing Conference and Hearing dates because her original request was incomplete.

However, in this case, the other district involved, Piedmont, was granted a second opportunity to mediate. Therefore, on reconsideration and in the interests of justice, mediation is granted for Berkeley Unified School District and Parents on behalf of Student on October 26, 2018 at 9:30. The mediation will be held at the Office of Administrative Hearings 1515 Clay Street, Suite 206, Oakland, CA 94612.

The previously scheduled prehearing conference and hearing dates are hereby VACATED. The **Prehearing Conference** is continued to **Friday November 2, 2018 at 10:00 a.m.** and the **Hearing** is continued to **Tuesday, November 13, 2018 beginning at 1:30** p.m. as it falls on a day following a state holiday. No further mediation dates or continuances will be granted absent proof of extraordinary circumstances.

IT IS SO ORDERED.

DATE: October 17, 2018

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings