BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2014020775 ORDER DENYING REQUEST FOR RECONSIDERATION OF DISTRICT'S REQUEST FOR CONTINUANCE

On March 13, 2014, District filed a motion for reconsideration of an ordering denying its request for a continuance of the hearing, which had been made solely on the frivolous ground that District's attorney wanted to attend three voluntary mediations for other school districts throughout Southern California on the same date as the hearing in this matter, and that additional hearing days would be needed for this matter. Student opposed reconsideration on the ground that Student's expert was only available on the current hearing start date of March 20, 2014.

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 AND ORDER

District's first argument for reconsideration is that its counsel is involved in a hearing for another school district, which is now scheduled to continue into the week this hearing is scheduled to begin. This is not good cause for a continuance. District's due process hearing request and prehearing conference statement listed two attorneys to represent the District. Unavailability of one of those attorneys is not good cause for a continuance on behalf of District, particularly when it is District's attorney and his law firm who are responsible for any scheduling problems.

District's second argument for reconsideration is that District's motion was denied without taking evidence regarding Student's claim that Students' expert was unavailable. This is not grounds for reconsideration. District's initial request for a continuance was made solely on the frivolous ground that its attorney wanted to conduct voluntary mediations for three other school districts in Southern California on the date of hearing and that additional hearing days were needed. Both of these grounds were addressed in the original order, which noted that hearings take preference over voluntary mediations and that at all times this matter was calendared to continue day by day, Monday through Thursday, if not completed on the first day. District's only reference to Student's expert in its original motion was in the context of arguing that Student would not be prejudiced, and was not raised as a reason to continue the hearing. Moreover, in opposition to District's reconsideration request, Student's Father has submitted a declaration stating that Student's expert is not available on the alternative dates suggested by District, and is ready to testify on the date set for hearing. To the extent District argues that there was a duty by Student's Father to "meet and confer" regarding witness scheduling, no such statutory duty exists, and prehearing conferences are held precisely to address witness scheduling. Reconsideration is not warranted on this ground.

District also argues that it has an "absolute right" to live cross-examination rather than telephonic testimony, and to put on the case only in the order it sees fit. District cites no authority for this, and none exists. Telephonic testimony is contemplated by the IDEA and California's Administrative Procedure Act. Moreover, whether telephonic testimony will be taken, and the order of witnesses, is within the discretion of the hearing ALJ. As of the date of this order, telephonic testimony has neither been granted, nor denied. Simply put, District's assertion that it is being denied non-existent rights is not grounds for reconsideration.

In sum, reconsideration of the order denying District's frivolous request for a continuance is not warranted.

IT IS SO ORDERED.

DATE: March 14, 2014

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings