BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

DEL MAR UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2020090236

ORDER GRANTING REQUEST FOR RECONSIDERATION; ORDER GRANTING STUDENT'S CONTINUANCE REQUEST

OCTOBER 28, 2020

On October 22, 2020, the undersigned Administrative Law Judge issued an order granting Student's request for a continuance. On October 23, 2020, Del Mar Union School District filed an opposition to Student's motion to continuance and a request for reconsideration of the order granting the continuance. On October 26, 2020, Student filed an opposition.

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

RECONSIDERATION

Del Mar offers new facts and circumstances to support reconsideration. Del Mar alleges Student did not serve it with the motion to continue, and it opposes the motion. Student's motion included a proof of service that it served the motion on three employees at the law firm representing Del Mar, including the attorney of record for this matter. Del Mar submitted a declaration stating none of the three law firm employees received the motion. Student also submitted a declaration with his opposition restating he served the law firm and explained that Del Mar told him to only communicate with the law firm. Although Student used the same email addresses as he previously used for other correspondence that the law firm received, it is possible something went wrong with the email system and Del Mar did not receive the motion. Therefore, the motion for reconsideration is granted.

CONTINUANCE REQUEST

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 for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness

due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (Ed. Code, § 56505, subd. (f)(3); Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

Del Mar opposes the continuance because it believes Student's current placement materially affects his ability to access and benefit from his specialized academic instruction. Del Mar also opposes the continuance on the grounds that Parent successfully represented Student in several matters without counsel.

Student contends Del Mar agreed to enroll him in a completely online program so his current placement of in-person general education could not cause a loss of educational benefit. Additionally, Student alleges because of the contentious nature of the relationship with Student and Del Mar, an attorney is necessary.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Although Del Mar opposes the motion, this is the initial continuance request in this matter. Student's desire to be represented in this matter is good cause

for the continuance. Additionally, the motion was timely filed more than three days prior to the prehearing conference.

ORDER

On reconsideration, Del Mar's request to vacate the continued dates and reinstate the previously scheduled dates is denied. All dates set in this matter are confirmed pursuant to the October 22, 2020 OAH Continuance Order.

IT IS SO ORDERED.

DocuSigned by:
Linda Johnson
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Linda Johnson

Administrative Law Judge

Office of Administrative Hearings