BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT

v.

OAKLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023100364

ORDER GRANTING REQUEST FOR RECONSIDERATION AND, UPON RECONSIDERATION, ORDER GRANTING DISTRICTS' JOINT MOTION FOR CONTINUANCE, SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING

NOVEMBER 17, 2023

On November 13, 2023, Oakland Unified School District and San Leandro Unified School District filed a joint request to continue the due process hearing with the Office of Administrative Hearings, OAH.

On November 16, 2023, the undersigned Administrative Law Judge issued an order granting the school districts' joint motion to continue. On November 16, 2023, Student filed a motion for reconsideration and opposition to the motion to continue.

STUDENT'S MOTION FOR RECONSIDERATION

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.)

Student offers new circumstances to support reconsideration. OAH issued the order granting the motion to continue before the close of business on the third day following the November 13, 2023 filing of the motion. Parties have three days to respond to a motion and, therefore, the filing of Student's response shortly before the close of business on November 13, 2023, was timely.

The motion for reconsideration is granted and Student's opposition is considered in ruling on the school districts' joint motion to continue.

OAKLAND UNIFIED'S AND SAN LEANDRO UNIFIED'S MOTION TO CONTINUE HEARING

Oakland Unified and San Leandro Unified seek a continuance of the hearing from the presently scheduled hearing dates of November 28, 29 and 30, 2023, to January 17 and 18, 2024, because their attorneys are scheduled for hearings in other, older due process matters.

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).)

On reconsideration, the order granting the motion to continue is confirmed. Oakland Unified and San Leandro Unified have established good cause to continue the due process hearing because their attorneys are in hearings on other, older due process matters, on the same hearing dates in this matter.. The motion is supported by the declarations of Oakland Unified's attorney Lenore Silverman and San Leandro Unified's attorney Leah Smith. The counsel carefully reviewed their respective calendars, with OAH case numbers for the other hearings.

Student argues in opposition is that the school districts' attorneys come from large firms, with other attorneys who could take the hearing as scheduled. However,

like the Student, the school districts have a right to choose its legal representatives. The school districts' attorneys, who are scheduled for hearing in older matters, were identified in San Leandro Unified's notice of representation on October 11, 2023 and in Oakland Unified's notice of representation on October 24, 2023. San Leandro Unified and Oakland Unified seek to assure that the attorneys, who have represented their respective interests since the complaint's filing, will be able to do so at hearing. Also, Student argues that the motion is speculative . However, the school districts' counsel waited in making the motion to continue until they were confident that the hearings in the previously filed matters were going as scheduled.

Student filed the due process complaint five weeks ago, on October 10, 2023. Student has not demonstrated that Student will be prejudiced by a short continuance. Student did not offer any alternative dates for continuance. The motion to continue is granted.

ORDER

1. Student's motion for reconsideration is granted.

2. Upon reconsideration, Oakland Unified's and San Leandro Unified's joint motion to continue is granted.

3. All dates are vacated. This matter is set as follows:

PREHEARING CONFERENCE will be held on January 5, 2024, at 3:00 PM.

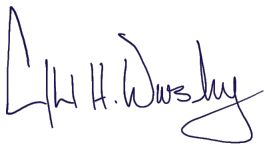
DUE PROCESS HEARING will be held on January 17, and 18, 2024.

The prehearing conference, and due process hearing will be held by videoconference or telephone, unless otherwise ordered. The due process hearing will

begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, Mondays and Fridays included, at the discretion of the Administrative Law Judge. Prehearing conference statements and motions are due no later than three business days before the prehearing conference.

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing.

IT IS SO ORDERED.



Clifford H. Woosley
Administrative Law Judge
Office of Administrative Hearings