BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022100624

ORDER GRANTING REQUEST FOR RECONSIDERATION DENYING MOTION TO CONTINUE, AND ADDING ADDITIONAL HEARING DATES TO ACCOMMODATE WITNESS AVAILABILITY

JUNE 7, 2023

On May 31, 2023, the parties jointly filed a Joint Request to Schedule a Mediation and Continue Hearing Dates. On June 1, 2023, OAH denied the request. The parties filed a joint motion for reconsideration after close of business hours on Friday, June 2, 2023, meaning the motion for reconsideration was deemed filed on June 5, 2023.

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

The underlying motion at issue was a Joint Request to Schedule a Mediation and Continue Hearing Dates and was analyzed as such, with the undesigned denying a second mediation and denying a continuance to accommodate the same. The motion was accompanied by declarations of Irvine's counsel and director of special education "in support of joint request to schedule mediation and continue the due process hearing." Based on the joint motion for reconsideration, the parties intended to make not one but two alternate motions: first, a request to continue hearing to accommodate mediation, and second, a request to continue hearing based on the unavailability of counsel and witnesses. The denial of the parties' underlying motion is reconsidered here as two alternate motions. The motion to reconsider is granted.

The initial dates set for hearing shall proceed as calendared. In their respective prehearing conference statements, each party anticipates that this matter may be heard in five days. It is unclear whether the parties anticipate that the entire hearing take five days, or whether each party will need five days for a total of ten days of hearing. The more generous estimate of ten days for hearing is used in making this Order.

The first week of hearing shall consist of the original three days set for hearing: June 13, 14, and 15, 2023 (Week One). The second week of hearing shall consist of June 19, 20, 21, and 22, 2023 (Week Two). These first two weeks of hearing shall offer the parties up to seven days for hearing as needed, and will accommodate the availability of all except four witnesses. Additional hearing days for those witnesses are addressed more fully below.

More specifically, Nahal Parsangi Wilson and Kris Linville are available to testify during Week One of hearing. Further, Kris Linville is also available to testify on the first day of Week Two as well, on June 19, 2023.

Roxanne Dibel and Caroline Chung are available to testify during Week Two of hearing. Brianna Silva is available to testify during some days of Week One and some days of Week Two, specifically, on June 13, 14, 21, and 22, 2023.

Jennifer O'Malley, Nathan Allen, Sean Vinney, and Gabriela Albay are all available to testify during Weeks One and Two of hearing.

Kalyn Boldrin, Jennifer Le, Annie Liuzzi, and Alison Ordenez are not available to testify any time during Weeks One or Two of hearing. These remaining four witnesses are available to testify beginning July 24, 2023, which is the earliest possible date that will accommodate the periods of unavailability of these four witnesses and counsel. After Weeks One and Two of hearing, hearing will be continued to July 24, 2023, to accommodate the testimony of these witnesses if needed, and may be continued day to day thereafter at the discretion of the ALJ.

OAH will accommodate a mediation, if requested by the parties, on any day between the issuance of this Order and the first day of hearing.

ORDER

1. The request for continuance of the initial hearing dates is denied; the initial dates set for hearing in this matter are confirmed;
2. After the initial dates set for hearing, the hearing will be continued until July 24, 2023, to accommodate the testimony of Kalyn Boldrin, Jennifer Le, Annie Liuzzi, and Alison Ordenez, and will continue day to day at the discretion of the ALJ as needed;
3. Request for second mediation is denied without prejudice. If the parties are interested in participating in mediation before the first day set for hearing, the parties shall submit a request for the same in writing, specifying date of mediation requested as well as whether the parties seek a full day, morning, or afternoon mediation. OAH will try to accommodate the request on the day and time requested.

IT IS SO ORDERED.

Claire Yazigi

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings