BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

ABC UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2019090707

and

PARENT ON BEHALF OF STUDENT,

v.

ABC UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2019020957

ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING REQUEST FOR CONTINUANCE

On September 23, 2019, the undersigned Administrative Law Judge issued an order denying ABC Unified School District's request to continue. On September 24, 2019, ABC Unified filed a motion for reconsideration with the Office of Administrative

Hearings, referred to as OAH. On September 24, 2019, Parent on behalf of Student filed an opposition. Student only opposed the hearing dates proposed by ABC Unified. ABC Unified replied to Student's opposition on September 26, 2019.

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.)

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.)

DISCUSSION

ABC Unified offers new facts and circumstances to support reconsideration. ABC Unified's request for continuance was denied during a prehearing conference held on September 23, 2019. ABC Unified's request was based upon the unavailability of its attorney due to her representation in a conflicting OAH matter. However, ABC Unified failed to submit a written request for continuance three days prior to the prehearing conference, as previously ordered by OAH. ABC Unified failed to meet and confer with Student regarding the request. And ABC Unified was unable to identify the conflicting

matter during the prehearing conference. For those reasons, ABC Unified's request was denied.

In its motion for reconsideration, ABC Unified identified the conflicting matter, OAH case number 2019020379/2019020539. ABC Unified also clarified its attempt to continue the conflicting matter, which was denied by OAH because the conflicting matter was filed prior to the present matter. Because the conflicting matter was filed prior to the present matter, its hearing dates takes precedence over the hearing dates for the present matter. Consequently, ABC Unified has offered new facts to support reconsideration and its motion for reconsideration is granted.

The foregoing facts also establish good cause for a continuance. ABC Unified would be unduly prejudiced if it went to hearing without its attorney of record.

ABC Unified met and conferred with Student's counsel prior to submitting its motion for reconsideration. However, the parties were unable to agree upon hearing dates. In its motion for reconsideration, ABC Unified proposed hearing dates on November 19, 20, and 21, 2019.

Student did not oppose Student's request to continue the due process hearing. Rather, Student complained the dates proposed by ABC Unified would extend the hearing dates too long and proposed October 29, 30, and 31, 2019. In its reply, ABC Unified indicated that its attorney was unavailable on October 29, 30, and 31, 2019, due to her representation in a prior filed matter, OAH case number 2019020441. The hearing dates proposed by ABC Unified are two weeks after Student's proposed dates and Student failed to show that he would be prejudiced by that extension.

ORDER

On reconsideration, ABC Unified's motion for reconsideration is granted and its request for continuance is granted. All hearing dates are vacated. The hearing shall be reset as follows:

Prehearing Conference shall be on November 8, 2019, at 1:00 PM.

Due Process Hearing shall be on November 19, 20, and 21, 2019, and continuing day to day, as needed at the discretion of the Administrative Law Judge. The hearing shall begin at 9:30 AM the first day and at 9:00 AM each subsequent day, unless otherwise ordered.

The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in Primary Case, OAH case number 2019090707.

IT IS SO ORDERED.

DATED: September 26, 2019

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Paul H. Kamoroff
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Paul H. Kamoroff
Administrative Law Judge
Office of Administrative Hearings