BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023100346

# ORDER GRANTING REQUEST FOR RECONSIDERATION AND CONFIRMING PREHEARING CONFERENCE AND HEARING CONTINUANCE

NOVEMBER 17, 2023

On November 16, 2023, the undersigned Administrative Law Judge issued an order granting Manhattan Beach's request for continuance of the hearing in this case, based on a Manhattan Beach's counsels' conflict with the hearing dates previously on calendar. On November 16, 2023, Student filed a Motion for Reconsideration on the grounds that Student had not been afforded three business days to file opposition. Student further argued that Manhattan Beach did not have good cause for a continuance to March 5, 2024. This motion for reconsideration is being treated as both

a reconsideration request and Student's opposition to the Manhattan Beach's original request for continuance.

## ORDER GRANTING 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 points out that three business days had not elapsed when the order granting Manhattan Beach's motion was granted. Student's motion for reconsideration is granted and the arguments stated are considered Student's opposition to Manhattan Beach's original motion.

## REQUEST FOR HEARING CONTINUANCE

On reconsideration, the original order granting continuance is confirmed. Manhattan Beach offered sworn declarations stating conflicts for both of its counsel for the hearing dates originally scheduled of November 28, 29, and 30, 2023. Student argues that he has a right to a decision within 45 days of filing. Student argues that the request to schedule the hearing beginning March 5, 2024 increases the time for decision in the case by approximately three months. Student contends that unnecessary continuances are prejudicial to Student. Student also asserts that any continuance in this matter detrimentally impacts Student and his family.

Student asserts that Manhattan Beach has not explained how it will manage its multiple hearing conflicts in other cases. That issue is not before this tribunal. The question being addressed here is whether Manhattan Beach states good cause for a hearing continuance. Counsel unavailability, due to a hearing conflict involving an earlier filed case, is good cause for a continuance. Student has offered no evidence of how a short continuance would result in any detrimental impact.

Student objects that Manhattan Beach did not disclose the conflict "as soon as reasonably practicable," instead disclosing the conflict on November 9, 2023. Student offers no evidence of the date Manhattan Beach should have disclosed the conflict. Nor did Student offer evidence of prejudice caused by the disclosure of the conflict on November 9, 2023. Nor does Student offer legal authority declaring the conflict could not be considered due to the disclosure on this date.

Finally, Student argues that Manhattan Beach failed to offer evidence of good cause in support of its request for a continuance until March 5, 2024. This argument indicates that Student failed to thoroughly read the original order granting a continuance in this case. The undersigned reaches the same conclusion on reconsideration as decided in the original order. No good cause for a continuance to March 5, 2024, was offered.

## ORDER GRANTING CONTINUANCE CONFIRMED

Manhattan Beach established good cause for a hearing continuance based on counsel unavailability for the dates originally scheduled. The order granting continuance is confirmed. The dates for prehearing conference and hearing remain as ordered in the original order granting continuance, as Student offered no evidence of prejudice that would arise due to the continuance ordered. The dates will be:

PREHEARING CONFERENCE will be held on December 1, 2023 at 10:00 AM.

HEARING will be held on December 12, 13, and 14, 2023.

The prehearing conference, and due process hearing will be held by videoconference 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 to OAH no later than three business days before the prehearing conference. Late motions will only be considered if evidence of good cause is submitted for the late filing.

The parties must immediately give potential witnesses notice of 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.

*Penelope Pahl*

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings