BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PAJARO VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022050705

ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING REQUEST FOR CONTINUANCE

JUNE 30, 2022

On May 19, 2022, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Pajaro Valley Unified School District as respondent. OAH set the due process hearing for July 6 and 7, 2022.

On June 13, 2022, Pajaro Valley Unified School District, called Pajaro Valley, requested a due process hearing continuance for August 9, 2022, or later due to counsel and witness unavailability. On June 15, 2022, Student opposed Pajaro Valley's motion but agreed to a one-to-two-week due process hearing continuance. The same day, Pajaro Valley submitted a reply.

On June 20, 2022, the undersigned administrative law judge issued an order granting a short continuance for counsel unavailability and explained that it failed to establish witness unavailability due to a lack of evidence submitted. Accordingly, the undersigned vacated all dates and continued the due process hearing to July 19, 20, and 21, 2022.

On June 24, 2022, Pajaro Valley filed a motion for reconsideration and requested a due process hearing continuance after August 8, 2022, with the witness declaration and vacation itinerary attached. Student opposed the motion for reconsideration on June 27, 2022, but agreed to assist in accommodating the witness to appear through videoconference.

OAH 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 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.)

Pajaro Valley filed its motion for reconsideration within a reasonable time after the initial order was issued, and offered new facts, mainly, more specific information about the witness vacation plans. Thus, Pajaro Valley's motion for reconsideration is granted.

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; or another significant, unanticipated change in the status of the case because the case is not ready for hearing. (See 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; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

The undersigned considered all relevant facts and circumstances in this matter and denies Pajaro Valley's motion for a due process hearing continuance because it failed to establish good cause for a further continuance. Pajaro Valley submitted the itinerary that confirmed a witness will be out of the country from July 8, 2022, to July 31, 2022, but did not establish that the witness is necessarily unavailable to testify. Because due process hearings are currently conducted virtually, a party or witness vacation plans do not necessarily demonstrate unavailability solely due to a vacation, unlike with in-person hearings. Thus, without a showing that the witness is unable to connect remotely or otherwise unavailable during the scheduled hearing due to a time change or some other reason, unavailability is not established. Here, Pajaro Valley failed to submit any further information except to confirm the dates of the vacation plans and location.

Additionally, to continue a hearing for one witness is unreasonable. The due process hearing can go forward as scheduled. During hearing, the assigned

administrative law judge can determine how to proceed if, in fact, the witness is unable to connect remotely or can establish unavailability for some other reason.

ORDER

1. Pajaro Valley's motion for reconsideration is granted.
2. Pajaro Valley's motion for a due process hearing continuance is denied.
3. All dates set in this matter are confirmed.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings