BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

FRANKLIN-MCKINLEY SCHOOL DISTRICT.

OAH CASE NUMBER 2022070301

ORDER GRANTING REQUEST FOR RECONSIDERATION

AUGUST 19, 2022

On August 16, 2022, the undersigned Administrative Law Judge issued an order denying request for continuance. Student and Franklin-McKinley School District jointly requested to continue the due process hearing without providing good cause to the continue the matter. As a result, the joint request for continuance was denied. On August 17, 2022, Franklin-McKinley filed a Motion for Reconsideration of Order Denying Request for Continuance. The Office of Administrative Hearings did not receive a response from Student.

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

Franklin-McKinley offers new facts, circumstances or law to support reconsideration. Franklin-McKinley explained that parties' motion filed on August 9, 2022, was supposed to include request to schedule a mediation and continue the due process hearing. Franklin-McKinley asserted that the request accidently omitted a request to continue the hearing. When the parties learned that OAH only granted the request for mediation and not a continuance, Franklin-McKinley attempted to correct the mistake by resubmitting the request using OAH's form on August 10, 2022. The declaration of Christine Huntoon, attorney at law, established that on August 10, 2022, Franklin-McKinney wrote in the comments section of the OAH efiling page that it was resubmitting the request due to a clerical error with the initial form. Franklin-McKinley also established that its staff spoke with the OAH case manager to explain the mistake was the basis for resubmitting the joint request for continuance.

The undersigned was not aware that request for continuance was submitted to correct a clerical error. As a result, the motion for reconsideration is granted.

JOINT REQUEST TO CONTINUE THE DUE PROCESS HEARING

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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Granted. All dates are vacated. The continuance request is granted as the parties established good cause to continue the due process hearing based upon the parties' request to schedule mediation. This matter will be set as follows:

Prehearing Conference will be held on October 14, 2022, at 3:00 PM.

Due Process Hearing will be held on October 25, 2022, through October 27, 2022. The hearing shall begin at 9:30 AM the first day, and at 9:00 AM on all other days unless

otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date.

ORDER

1. On reconsideration, the parties' joint request to continue the due process hearing is granted.
2. The mediation date will remain as scheduled.
3. The prehearing conference will be held on October 14, 2022, at 3:00 PM.
4. The due process hearing will be held October 25, 2022, through October 27, 2022.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings