BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN MATEO FOSTER CITY SCHOOL DISTRICT.	OAH Case No. 2016090418 ORDER DENYING STUDENT'S MOTION TO CLARIFY ORDER

On December 30, 2016, the undersigned administrative law judge issued an order granting the motion of San Mateo Foster City School District to dismiss Student's issue 1 as barred by the statute of limitations. On February 10, 2016, Student filed a motion to "modify" the order and deny District's motion, which is in the nature of a motion for reconsideration and will be treated as a motion for reconsideration. Student failed to serve the motion on San Mateo Foster City. As a courtesy, the Office of Administrative Hearings sent a copy to San Mateo Foster City and as of the time of this order, no response has been received.

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. (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

Student's due process hearing request (complaint) alleges procedural and substantive violations of the Individuals with Disabilities Education Act by District at IEP team meetings on and before September 5, 2014. Student filed her complaint on September 6, 2016, more than two years after the IEP's were drafted. The undersigned ALJ found Student's claims arising prior to September 6, 2014 to be barred by the two-year statute of limitations and dismissed Student's Issue 1 by order dated December 30, 2016.

Student did not seek reconsideration of the December 30, 2016 order within a reasonable time. Student waited 42 days, and less than two business days before hearing, to

call this tribunal's attention to an alleged error, and failed to provide an explanation for this unreasonable delay. The declaration of Student's advocate states that he didn't "become aware" that issues arising prior to September 6, 2014 were barred until the prehearing conference on February 10, 2016. However, the December 30, 2016 order expressly barred claims arising prior to September 6, 2014. Student's argument appears disingenuous, but more importantly, does not provide the requisite explanation for failure to seek reconsideration within a reasonable period of time.

A party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. Student did not oppose District's motion to dismiss portions of her complaint on the merits. Student now argues that her complaint was filed within the two-year statute of limitations based on calendar dates in September 2016, which facts existed and were known to Student at the time District's motion was filed and served. Student provides no explanation for her failure to previously provide this allegedly new calendar information.

Student contends that the language of the December 30, 2016 order limiting Student's claims to those arising on or after September 6, 2014 was a "clerical error," and should be modified to allow claims arising on or after September 5, 2014. The dates set forth in the order were not clerical errors, and this argument is simply another reiteration of Student's request for reconsideration.

For the reasons stated above, Student's motion for reconsideration is denied.

IT IS SO ORDERED.

DATE: February 13, 2017

DocuSigned by:
Alexa Hohensee
A7D463FF094544B...
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings