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 VACATE ORDER OF DECEMBER 30, 2016

On December 30, 2016, the undersigned administrative law judge issued an order granting the motion of San Mateo Foster City School District to dismiss, and: dismissing Student's Issue 1 as barred by the statute of limitations; limiting Issues 2, 3, and 6 to time periods from September 6, 2014 forward; and dismissing Issues 4 and 5 as outside of OAH jurisdiction.

On February 13, 2017, OAH denied Student's untimely and unsupported motion to "modify" the order and allow claims accruing on or before September 5, 2014. On February 23, 2017, Student filed a motion for reconsideration. Based on equitable considerations, by order dated February 24, 2017, the motion for reconsideration was granted, and District's original motion to dismiss was denied as to Issue 1, and Student's claims in Issues 1, 2, 3 and 6 were limited to those accruing on or before September 5, 2014, on a showing that the complaint had been timely filed within the two-year statute of limitations as to those claims. At a prehearing conference on February 24, 2017, the hearing was continued to March 1, 2017 for the parties to prepare for hearing on the newly permitted claims.

On February 27, 2017, Student filed a motion to vacate the December 30, 2016 order on the ground that it was issued in violation of Student's due process rights. On December 28, 2017, District filed opposition to Student's motion as untimely.

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 seeks reconsideration of the December 30, 2016 order on the grounds that: (i) her complaint was deemed sufficient because no timely notice of insufficiency was filed, (ii) that the statute of limitations is an affirmative defense requiring a fact-specific inquiry at hearing, not jurisdictional, and (iii) that the order limiting Student's claims deprived him of due process.

Student's motion to vacate is in essence a motion for reconsideration of the December 30, 2016 order, and is untimely and without a showing of new or different facts, circumstances, or law justifying reconsideration.

Student brings this request for reconsideration almost 60 days after she was served with the December 30, 2016 order, and two days prior to the hearing in this matter, which constitutes an unreasonable delay. The sworn declaration of Student's advocate fails to explain the delay in making Student's current legal arguments, and does not present any new or different facts, circumstances or law in support of reconsideration.

The advocate's declaration establishes that he discussed with District's counsel, as early as November 17, 2016, Student's contention that a complaint cannot be challenged more than 15 days from the date of filing. Student included that argument in her opposition to District's motion to dismiss filed December 27, 2016. The December 30, 2016 order expressly addressed and rejected that argument. Student does not cite any new or different facts, circumstances or law in support of her argument that a motion to dismiss cannot be brought more than 15 days after a complaint is filed, and relies on statutes, regulations and case law in place in December 2016, but not referenced in her original opposition.

Student contends that she was surprised that OAH held the statute of limitations to be jurisdictional. OAH's lack of jurisdiction was the express basis of District's motion to dismiss, which cited OAH orders finding the statute of limitations jurisdictional and placed Student on notice of such orders prior to the filing of Student's opposition to that motion. Student chose not to address the issue of whether OAH had jurisdiction to hear claims beyond the statute of limitations in her original opposition, or in the subsequent motions for modification and reconsideration of the December 30, 2016 order. Student relies on a 1993 California civil court case, limited to a motion for summary judgment, to address the jurisdictional issue, rather than the law applicable to special education due process proceedings under the Administrative Procedures Act (Gov. Code, § 11507, et seq.) or the Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq.). In sum, Student presents no new or different facts, circumstances or law, and gives no explanation for her failure to address District's jurisdictional argument in her opposition or prior motions. Additionally, Student did not address that in her complaint, Student did not present any facts, which if taken as true, would support a piercing of the statute of limitations. Because no facts were pled, there was no basis to extend the statute of limitations.

Student has not been deprived of due process, and may proceed to hearing on all claims not barred by the statute of limitations. Student fails to provide a reasonable excuse for failing to raise her denial of due process argument earlier than two months after the December 30, 2016 order was issued, or in her two motions previously challenging that order. This argument raises no new or different facts, circumstances or law.

For the reasons stated above, Student's motion to vacate the December 30, 2016 order is denied.

To the extent Student contends that the undersigned ALJ misapplied the law, that is not a basis for reconsideration, but for seeking review, if and to the extent available.

IT IS SO ORDERED.

DATE: February 28, 2017

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