BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017061033
v.	ORDER DENYING ANTIOCH'S REQUEST FOR RECONSIDERATION AND GRANTING ANTIOCH'S MOTION FOR LEAVE TO AMEND RESPONSE TO DUE PROCESS COMPLAINT
ANTIOCH UNIFIED SCHOOL DISTRICT.	

On December 26, 2017, the undersigned administrative law judge issued an order denying Antioch Unified School District's motion to bifurcate the issue of residency. At the hearing of the motion at the prehearing conference on December 22, 2017, the undersigned ALJ granted Antioch the opportunity to file a request for reconsideration within 10 days of the order denying the motion to bifurcate, including the opportunity to cite authority to support Antioch's position that a finding that Student was not a resident would be determinative of the district's liability concerning the issues in this case. On January 8, 2018, Antioch filed a request for reconsideration. On January 10, 2018, Student filed an opposition to Antioch's request for reconsideration. On January 11, Antioch filed a reply to Student's opposition.

Student's opposition to Antioch's request for reconsideration is based on Antioch's failure to file the request within 10 days of the order denying the motion to bifurcate; the failure of Antioch to cite new facts or law; and on the substantive grounds that Antioch failed to cite any authority supporting retroactive relief for any alleged substantive or procedural denials of a free and appropriate public education for students it is serving based on a later discovery of alleged non-residency. Student claims that Antioch waived the right to assert residency as a defense due to its failure to timely pursue a challenge to Student's residency or verification of Student's residency during the timeframe involved in this matter.

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

1. Request for Reconsideration of Order Denying Antioch's Motion to Bifurcate the Issue of Residency. The undersigned ALJ has reviewed and considered Antioch's request for reconsideration, Student's opposition and Antioch's reply. Antioch alleges no new facts, circumstances, or law in support of the requested reconsideration. The cases cited in support of Antioch's request for reconsideration existed at the time of Antioch's motion to bifurcate. Furthermore, there was no precedential authority cited by Antioch supporting the retroactive relief of a district for past failures to follow procedural safeguards for student's being served by the district at a time which the district provided services and made decisions while believing that the Student was a resident of the district.

The request for reconsideration is also not timely because it was not filed within ten days after issuance of the order.

Accordingly, Antioch's request for reconsideration is Denied.

2. Antioch's Motion for Leave to Amend Response to Due Process Complaint. The December 26, 2017 order denying Antioch's motion to bifurcate the issue of residency was based in part on the finding that Antioch was precluded from raising residency as an issue in the case as it was not included as a defense in Antioch's response to Student's amended due process complaint. Antioch's request for leave to amend the response to Student's amended due process complaint is Granted. Any prejudice to Student by Antioch's amended response is outweighed by the prejudice to Antioch that would result from being precluded from asserting the affirmative defense of residency as an issue at hearing.

ORDER

1. Antioch's request for reconsideration is Denied.

2. Antioch's motion for leave to amend its response to Student's due process complaint is Granted.

IT IS SO ORDERED.

DATE: January 18, 2018

DocuSigned by:
Rita Defilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings