BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: VAL VERDE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2014110063 ORDER DENYING REQUEST FOR RECONSIDERATION

This matter was set for due process hearing on February 18, 2015. On the morning of hearing, during in limine discussions with both parties prior to the commencement of the hearing, District requested to withdraw its complaint. Student did not oppose District's request. The ALJ granted District's request to withdraw its complaint, and the matter was dismissed, subject to receipt of District's Notice of Withdrawal.

On February 20, 2015, District filed its Notice of Withdrawal, and on February 26, 2015, the matter was dismissed without prejudice.

On February 23, 2015, Student filed an Opposition to District's Motion to Withdraw its action. Student opposes the dismissal of District's complaint on the ground that it requested and was dismissed without prejudice. District has not filed a response to Student's opposition.

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 AND ORDER

Student alleges no new facts, circumstances, or appropriate law in support of the request for reconsideration, as follows:

Student erroneously cites Civil Code of Procedure, section 581, subsection (e) which states" after the actual commencement of trial, the court shall dismiss the complaint…with prejudice, if the plaintiff requests a dismissal unless all affected parties to the trial consent to dismissal without prejudice, or by order of the court dismissing the same without prejudice on a showing of good cause."

In this matter the hearing had not yet commenced. At the ALJ's request, the parties engaged in in limine discussion of several jurisdictional issues, which would need to be addressed in hearing, specifically (1) determination who held educational rights for Student; (2) what school district was jurisdictionally responsible for Student's education; and (3) did OAH have jurisdiction to determine the issue presented without a prior determination of Student's district of residence, and/or determination of which parent's home represented Student's residence for purposes of educational rights.[1] Additionally, Father, the parent who sought special education remedies on behalf of Student, was not present. Student's Advocate, and stepmother, who purportedly attended the hearing on Student's behalf, were present during the discussions, and did not oppose District's withdrawal at that time. No witnesses were sworn, nor testimony taken.

Additionally, as a procedural matter, Student's motion is not accompanied by a sworn declaration by any party on Student's behalf.

IT IS SO ORDERED.

DATE: March 10, 2015

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

[1] It was uncontroverted that Student's parents resided in different school districts, and shared physical custody of Student. It was also uncontroverted that Student had not qualified for special education and related services in either school district.