BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023020910

ORDER DENYING REQUEST FOR RECONSIDERATION

MARCH 16, 2023

On March 13, 2023, the undersigned Administrative Law Judge, referred to as ALJ, issued an order following a prehearing conference, referred to as a PHC, for an expedited hearing. That order also contained a denial of Sacramento City Unified School District's motion to dismiss on, among other grounds, Student's failure to serve the complaint on Sacramento City. On March 15, 2023, Sacramento City filed a motion for reconsideration of the denial of the motion to dismiss. The Office of Administrative Hearings did not receive a response from Student at the time of consideration.

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

On March 7, 2023, Sacramento City filed a motion to dismiss Student's complaint on the grounds that Student did not serve its complaint on Sacramento City, and that Student has withdrawn from special education, and therefore OAH does not have jurisdiction to resolve Student's complaint. Sacramento City only seeks reconsideration on the first ground.

The complaint was filed with OAH on February 16, 2023, and the proof of service was filed on February 27, 2023, indicating the matter was served on February 10, 2023 directly at Sacramento City's main office. OAH issued a scheduling order on February 28, 2023.

Parent argued that the complaint was delivered to a person identified as "Kelly." At the PHC, counsel for Sacramento City Unified argued that this was a common problem with Parent, as the same thing has routinely happened in prior cases with Parent. There was evidence that counsel and representatives of Sacramento City inquired with all known employees, who denied receiving the complaint. Counsel also indicated that members of her firm called OAH and were told there was no active case, and that counsel should obtain a copy of the complaint directly from Parent. Sacramento City employee Kelly Hood, who is the Director of Constituent Services, denies ever receiving a copy of the complaint from Parent. As noted in the

March 13, 2023 Order, Sacramento City Unified did receive a scheduling order from OAH and did attend an expedited mediation.

Sacramento City argues Parent never complied with the undersigned's order to serve a copy of the complaint by the end of the day on March 13, 2023, although it does concede it received a copy of the complaint from OAH the following day, March 14, 2023. Sacramento City contends that Parent's non-compliance with the PHC order, as well as the fact that Parent made alleged false statements about service, warrant reconsideration. Sacramento City submits declarations from its employees as well as its counsel indicating that it is OAH's "policy" not to provide copies of complaints, and evidence that counsel and the district have had service issues with Parent over numerous filed cases.

Sacramento City offers no material new facts, circumstances or law to support reconsideration. As noted in the PHC order denying the motion to dismiss it was, and remains, factually unclear exactly what transpired on service of the complaint. This type of factual dispute cannot be resolved by way of a motion to dismiss, or a PHC hearing. Of greater significance, however, is that not only did Sacramento City have notice of the action, but OAH issued a scheduling order based upon the filing date of the proof of service, not the complaint. The evidence and record both indicate that the parties have been engaged in litigation over these issues for several months, and that Sacramento City has a familiarity with Student's issues. As such, there was no material prejudice to Sacramento City that would warrant granting a motion to dismiss, as any order issued by the undersigned ALJ would have only delayed the hearing by seven to ten days and not dismissed the case.

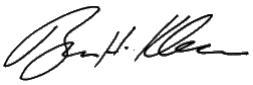
Finally, Parent was ordered to always hand serve subsequently filed documents on the district, and then send an email courtesy copy to Sacramento City's counsel of

those documents going forward. Parent was advised at the PHC, and in the order, that any failure to comply with the order would result in potential exclusion of evidence and witnesses at hearing. Sacramento City may raise any prejudice resulting from Student's failure to comply with the March 13, 2023 Order regarding subsequent pleadings and evidence at the hearing.

ORDER

Sacramento City has not established the March 13, 2023 Order should be reconsidered. The motion for reconsideration is denied. All dates set in this matter are confirmed.

IT IS SO ORDERED.



Brian H. Krikorian
Administrative Law Judge
Office of Administrative Hearings