BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ELK GROVE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015090077 ORDER DENYING REQUEST FOR RECONSIDERATION

On October 8, 2015, the undersigned Presiding Administrative Law Judge issued an order dismissing this matter for lack of jurisdiction, specifically because the claims raised in the complaint were a request to enforce the terms of a settlement agreement. On October 26, 2015, Student filed a motion to reconsider the dismissal based upon two grounds. The first ground is that Student's issue 5.6 in the complaint regarding parental participation in the individualized education program development process because the Elk Grove Unified School District failed to hold an IEP team meeting within 30 days of parental request on July 17, 2015, was not a request to enforce a settlement agreement. The second ground was that there was a latent ambiguity in the settlement agreement regarding an intention that Student's placement as outlined in the settlement agreement was designed to provide a free appropriate public education to Student, and therefore, the Office of Administrative Hearings has jurisdiction over the matter. On October 27, 2015, Elk Grove filed an opposition to the motion for reconsideration.

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 new facts in his motion for reconsideration. However, the new facts are regarding a new claim; specifically that Elk Grove failed to convene an IEP team meeting within 30 days of a parental request made on July 17, 2015. However, these new facts do not

give rise to reconsideration in this case because this claim was not included in the initial complaint. A motion for reconsideration of a dismissal of a case is not the vehicle by which a new claim can be added to a complaint. Should Student wish to pursue new claims against Elk Grove that were not raised in the prior complaint, Student must file a new complaint.

Further, Student's new argument that Student's offered placement for this school year does not provide him a FAPE independent of the settlement agreement between the parties is also a new claim. The original complaint specifically cast all claims raised in light of a breach of the settlement agreement. The original complaint states at the beginning of the issues "[t]he EGUSD has failed to comply with the terms of the March 16, 2015 Settlement Agreement resulting in a denial of a Free Appropriate Public Education (FAPE)." Every single issue outlined in the complaint was related back to a term of the settlement agreement. Attempting to argue a denial of FAPE independent of the settlement agreement is an entirely new claim, not new facts, circumstances or law that would give rise to a reconsideration.

Accordingly, Student's request for reconsideration is denied.

IT IS SO ORDERED.

DATE: October 28, 2015

/s/

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings