BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

EXCEL ACADEMY CHARTER SCHOOL.

OAH CASE NUMBER 2020100257

ORDER GRANTING REQUEST FOR RECONSIDERATION OF MOTION TO AMEND, AND VACATING ORDER GRANTING MOTION TO AMEND AND JANUARY 15, 2021 SCHEDULING ORDER

JANUARY 25, 2021

On January 15, 2021, the undersigned Administrative Law Judge issued an order granting Student's motion to amend the request for due process hearing, called a complaint, and ordered that all applicable timelines be reset. On January 15, 2021, the Office of Administrative Hearings, called OAH, issued a new scheduling order with new hearing dates.

On January 19, 2021, Excel Academy Charter School filed a motion for reconsideration of the order granting Student's motion to amend, supported by a declaration, on the ground that Student had not served the motion or amended complaint on counsel for Excel Academy. On January 22, 2021, Excel Academy filed a supplementary declaration stating that Student had not served the motion and amended complaint in response to Excel Academy's January 19, 2021 written request for service. OAH, did not receive a response from Student.

APPLICABLE LAW

OAH 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

Excel Academy offers new facts and circumstances to support reconsideration. Student's amended complaint includes a proof of service reflecting facsimile service of the motion to amend and amended complaint on counsel for Excel Academy on January 12, 2021. Excel Academy's motion for reconsideration and supplemental letter are supported by paralegal Bynoe's declarations under penalty of perjury asserting that it was never served. Specifically, Bynoe asserts that her office learned of the motion to amend and amended complaint only after receiving OAH's new scheduling order granting the motion to amend. Student neither responded to Excel Academy's

January 19, 2021 request for a copy of the motion and amended complaint nor filed a response to Excel Academy's motion for reconsideration. The motion for reconsideration is granted.

ORDER

On reconsideration, OAH's January 15, 2021 order granting Student's motion to amend is vacated. Student is ordered to serve and confirm Excel Academy's receipt of the motion to amend and amended complaint by 5:00 PM on January 27, 2021. Excel Academy is ordered to file an opposition or notice of non-opposition to the motion to amend by 5:00 PM on January 29, 2021.

The January 15, 2021 Scheduling Order is vacated. The prehearing conference date of February 12, 2021, at 10:00 AM and hearing dates of March 2, 3, and 4, 2021 are reinstated.

PARTICIPANT INFORMATION SHEETS FOR THE PREHEARING CONFERENCE MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not timely filed.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings