BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

MT. DIABLO UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2024020456

OAH CASE NUMBER 2024010744

ORDER DENYING SECOND REQUEST FOR RECONSIDERATION

APRIL 05, 2024

On March 25, 2024, Administrative Law Judge Cole Dalton issued an Order Granting Motion to Quash in Part and Modifying Subpoenas Duces Tecum, dated March 22, 2024. An Administrative Law Judge is known as an ALJ.

By the March 22, 2024, Order, ALJ Dalton limited the scope of the subpoenas issued by Mount Diablo Unified School to Student's medical and/or service providers, Anthony Verzi, Dr. Olga Kelly, Jennifer Jourdain, University of California San Francisco Benioff Children's Hospital, and Nan Arkwright. Specifically, the Order limited the

production required by the subpoenas to the documents pertaining to Student's feeding disorder, feeding issues, and feeding related needs.

On March 28, 2024, Student filed a motion for reconsideration of the March 22, 2024, Order. On March 28, 2024, OAH denied Student's motion for reconsideration on the grounds that Student offered no new facts, circumstances, or law, to justify reconsideration of the March 22, 2024, Order.

On April 4, 2024, Student filed a motion for reconsideration of the prior Orders. Student raises the same arguments he made in the original motion. Student also argues he does not have the funds to pay the third parties to comply with the subpoenas.

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.)

Disagreement with a judge's analysis is not proper basis for bringing a motion for reconsideration. (See e.g., *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500 [respondent's argument without merit and contrary to the legislative intent behind California Code of Procedure section 1008 when it argued that because the court misinterpreted California law in its initial decision, respondent was relying on "different" law when it reiterated its prior reasoning and authorities].)

The party seeking reconsideration must provide not only new evidence but also a satisfactory explanation for the failure to produce that evidence at an earlier time. The party moving for reconsideration must establish he could not, with reasonable diligence, have discovered and produced the evidence earlier. (See, *New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 213 [Evidence that was available and easily obtainable by the moving party at the time of the prior order does not qualify as a "new or different" within the meaning of section 1008]; *Baldwin v. Home Savings of America, supra,* at pp. 1198-1201 [a party must provide a satisfactory explanation for failing to provide the new evidence earlier, a diligence requirement, which was designed to foster the legislative goal of reducing the number of reconsideration motions and creating incentive for parties to marshal their evidence].)

DISCUSSION

Student offers no new facts, circumstances, or law, to justify reconsideration of either the March 22, 2024, Order or the March 28, 2024, Order. Although Student disagrees with ALJ Dalton's analysis and conclusions, that is not a proper basis for a motion for reconsideration.

Student's claim that he does not have the financial resources to pay for compliance with the subpoenas does not justify reconsideration. This was evidence that was available and easily obtainable by Student at the time of the prior order. As such, it does not qualify as a "new or different" within the meaning of section 1008.

In any event, Student apparently believes he is required to pay for the third parties' compliance with the subpoenas served by Mt. Diablo Unified. This is belief is incorrect. The party who issued the subpoenas duces tecum is responsible for paying the reasonable costs incurred by the third party in complying with the subpoenas. (See,

Evid. Code, § 1563, subd. (b)(1).) As such, Student's financial hardship argument does not justify reconsideration of the prior Orders.

ORDER

Student has not established that the OAH Orders dated March 22, 2024, and March 28, 2024, Order should be reconsidered. The motion for reconsideration is denied.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings