BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

| | |
|---|---|
| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT. | OAH CASE NO. 2013051091<br><br>ORDER GRANTING REQUEST FOR RECONSIDERATION; ORDER GRANTING MOTION TO AMEND |

On May 24, 2013, Student filed a Due Process Hearing Request (complaint), naming Santa Monica-Malibu Unified School District (District). On October 30, 2013, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint). The District stipulated to the filing of an amended complaint.

On November 1, 2013, the undersigned administrative law judge issued an order that denied Student's motion to amend without prejudice, and permitted Student to file a subsequent motion, accompanied by a declaration from Student's counsel as to the delay in filing the amended complaint. On November 4, 2013, Student filed a request for reconsideration, which included the requested declaration from Attorney Eric Menyuk. The District did not file a response, but is presumed not to be opposed based on its prior stipulation to the amended complaint.

## APPLICABLE LAW

The Office of Administrative Hearings (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. (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 law in support of the request for reconsideration, as Student's contention that the parties, not OAH, can unilaterally determine the filing of an amended complaint if the parties agree to the filing of an amended complaint is not supported by any

legal authority. The use of the term 'may' in title 20 United States Code section 1415(c)(2)(E)(i) necessarily implies that OAH retains some control over the request. To do otherwise would lead to the absurd result of parties being able to delay the commencement of hearings on the eve of hearing by agreeing to amendments to the complaint to restart the applicable timelines for the hearing.[1] Thus, Student failed to establish that OAH misread the law in denying the October 30, 2013 motion to amend.[2]

However, Student's counsel provided OAH with additional facts as requested in the November 1, 2013 order that adequately explained the delay in filing the amended complaint because of the difficulty in scheduling a mediation date due to the calendars of Student's counsel, District's counsel and OAH. Accordingly, Student's request for reconsideration is granted. Therefore, the motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

IT IS SO ORDERED.

Dated: November 6, 2013

/s/
PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

[1] In this case, the parties have requested three continuances, with OAH denying the last request on October 21, 2013.

[2] Student's counsel is advised that the puffery used in the request for reconsideration appeared more designed to attempt to bully OAH into a ruling for Student, instead of putting forth a reasoned legal argument, and that the order that denied the request without prejudice was an invitation to augment the request and not a chastisement of Student's counsel.