BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. OXNARD SCHOOL DISTRICT.	OAH Case No. 2018080844 ORDER DENYING REQUEST FOR RECONSIDERATION

On September 5, 2018, the undersigned administrative law judge issued an order granting Student's motion for stay put. On September 17, 2018, Oxnard filed a request for reconsideration of that order. Student filed an opposition to the motion for reconsideration on September 19, 2018. Oxnard replied on September 24, 2018.

APPLICABLE LAW

The Office of Administrative Hearings generally reconsiders a ruling if the moving party demonstrates new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period. (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

Reconsideration

On August 17, 2018, Student filed a request for due process hearing and a motion for stay put, and served the complaint on Oxnard and Oxnard's counsel. Counsel admitted receiving the complaint and motion for stay put by email on August 17, 2018. Pursuant to the Scheduling Order in this matter, if a party wishes to oppose a motion, opposition should be received no later than three business days after service of the motion. Oxnard, however, failed to respond to Student's stay put motion. The order granting stay put, dated September 5, 2018, was issued 19 days after Student filed his motion. Oxnard's counsel claimed his failure to file opposition to Student's stay put motion was a result of his mistake, inadvertence, surprise or excusable neglect.

Counsel explained a number of circumstances that resulted in him failing to file opposition in this matter. First, on August 17, 2018, he sought an emergency injunction with state court and therefore did not immediately file a response to the stay put motion or complaint. Then, the due process complaint and motion for stay put were inadvertently overlooked because of a flood of emails and requests in relation to other special education matters, and counsel's attention was directed at receiving judicial relief in this matter. Subsequently, the State court declined to hear Student's request and Oxnard's counsel removed the matter to federal court on August 22, 2018. Because the filing papers did not conform to federal requirements, Oxnard had to convert the document and refile it in federal court. Thereafter, Oxnard's request for a temporary restraining order was denied; however, the court set a hearing for an order to show cause for a preliminary injunction on October 15, 2018.

Meanwhile, counsel explained that throughout August 2018, he acted on behalf of the school district in this matter, meeting and conferring with opposing counsel, and attempting to resolve this administrative law case.

Counsel further describes first receiving notice of the stay put order from Student's counsel on September 7, 2018, when they discussed Student's return to school, and then only realized that he failed to file opposition. The order granting stay put, however, was served on counsel on September 5, 2018.

Counsel's failure to file an opposition in this matter does not constitute, mistake, inadvertence, surprise or excusable neglect. Counsel admits to receiving service of the complaint on August 17, 2018, and representing the school district in this matter from that point forward. The essence of Oxnard's argument is that its counsel was so busy pursuing relief in another forum, and with other special education matters, that it neglected its duties in this one. Counsel's failure to oppose the motion for such an extended period, and his further failure to request an extension of time to file opposition in this matter, do not amount to good cause for reconsideration

ORDER

Oxnard failed to establish adequate grounds for reconsideration, and a reasonably explanation as to why the information was not previously presented. Accordingly, Oxnard's request for reconsideration is Denied.

IT IS SO ORDERED.

DATE: September 24, 2018



CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings