BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BELLFLOWER UNIFIED SCHOOL DISTRICT .	OAH Case No. 2018110378 ORDER DENYING STUDENT'S REQUEST FOR RECONSIDERATION

On November 8, 2018, Student filed a due process hearing request with the Office of Administrative Hearings, naming Bellflower Unified School District. On December 20, 2019, the Office of Administrative Hearings granted the parties' continuance request. On February 26, 2019, OAH granted the parties' second continuance request so they could participate in mediation, which they did on April 4, 2019. The continued hearing was to commence on April 23, 2019, but on April 5, 2019, Student filed a motion to amend the due process hearing request (amended complaint). OAH granted Student's Motion to Amend on April 10, 2018, and issued a new scheduling order for the hearing to commence on June 4, 2019.

On May 15, 2019, the parties filed a form joint continuance request that requested a second mediation on August 20, 2019, and hearing to commence on September 10, 2019. On May 16, 2019, OAH denied the continuance for failing to provide any good cause for the second mediation or third continuance in this matter.

On May 21, 2019, Student filed a request for OAH to reconsider its denial of the continuance request, which included a declaration from Student's attorney. Bellflower has not filed a response.

On May 22 2019, the undersigned Presiding Administrative Law Judge issued an order that denied Student's motion because Student failed to adequately explain the delay in retaining an independent assessment. On May 22, 2019, Student filed a request for reconsideration. Bellflower has not filed a response.

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. (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.)

School districts have an affirmative, ongoing duty to actively and systematically seek out, identify, locate, and evaluate all children with disabilities residing within their boundaries who may be in need of special education and related services. (20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a); Ed. Code, §§ 56171, 56300 et seq.) This ongoing duty to seek and serve children with disabilities is referred to as "child find." California law specifically incorporates child find in Education Code section 56301, subdivisions (a) and (b). "The purpose of the child-find evaluation is to provide access to special education." (*Fitzgerald v. Camdenton R-III School District* (8th Cir. 2006) 439 F.3d 773, 776.) This duty extends to all children "suspected" of having a qualifying disability and a need for special education. (34 C.F.R. § 300.311 (c)(1); *N.G. v. Dist. of Columbia* (D.D.C. 2008) 556 F. Supp.2d 11, 26.) Pursuant to this standard, the appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Depart. of Educ., State of Hawaii v. Cari Rae S.,* (D. Hawaii 2001) 158 F.Supp.2d 1190, 1195.)

Child find does not guarantee eligibility for special education and related services under the IDEA. Rather, it is a locating and screening process to identify those children who are potentially in need of special education and related services. Once a child is identified as potentially needing specialized instruction and services, the district must conduct an initial evaluation to confirm the child's eligibility for special education. (20 U.S.C. §1414(a)(1)(C); 34 C.F.R § 300.301(c); Ed. Code, § 56302.1, subd. (a).)

DISCUSSION

Student alleges no new facts, circumstances, or law that would support granting the request reconsideration. The sole issue in Student's amended complaint is whether Bellflower failed to comply with its Child Find obligations in not assessing Student for initial eligibility for special education and related services. Student's amended complaint contains numerous allegations that contend that Student might require special education and Bellflower's failure to timely assess Student. Nowhere in Student's amended complaint does Student allege that Student was eligible for special education, when Bellflower should have found Student eligible and the category or categories that Student is eligible under.

According to Student's attorney declaration, Bellflower assessed Student and found Student eligible for special education and related services on March 19, 2019. Because Bellflower has finally assessed Student and found Student eligible, Student has not demonstrated the need for an independent assessment as Student did not allege that Bellflower should have found Student eligible for special education services sooner. Further, the March 19, 2019 individualized education program is not at issue in Student's amended complaint. Accordingly, Student's request for reconsideration is denied.

ORDER

Student's Motion for Reconsideration is denied. Matter shall proceed to hearing as scheduled.

IT IS SO ORDERED.

DATE: May 29, 2019

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings