BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SANTA BARBARA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014060923 ORDER DENYING STUDENT'S REQUEST FOR RECONSIDERATION

On September 3, 2014, the undersigned administrative law judge issued an order granting in part and denying in part Santa Barbara Unified School District's to dismiss portions of Student's complaint that were outside the applicable two-year statute of limitations. At the time the order was issued, the Office of Administrative Hearings did not have on file an opposition to Santa Barbara's motion to dismiss.

On September 4, 2014, Student filed a motion for reconsideration of the order. Student states that he did file an opposition to Santa Barbara's motion to dismiss, but inadvertently faxed it to the wrong OAH fax number. Student attached a copy of his opposition as an exhibit to his motion for reconsideration.

Santa Barbara has not filed a response to Student's motion for reconsideration.

APPLICABLE LAW, DISCUSSION, AND ORDER

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.)

Student has demonstrated that he attempted to file an opposition to Santa Barbara's motion to dismiss that inadvertently was not received by OAH. The ALJ has considered Student's opposition. However, for the following reasons, Student's motion for reconsideration is denied.

In his opposition, Student sets out a lengthy discussion as to why he believes that the allegations in his amended complaint that address issues outside of the applicable two-year

statute of limitations. Student's arguments fail for two reasons. First, none of the discussion in the opposition was raised in Student's amended complaint. As stated in the order granting in part and denying in part Santa Barbara's motion to dismiss, in California, the statute of limitations for due process complaints is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the student's parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent. There are no allegations in the amended complaint that Santa Barbara misrepresented that it had resolved Student's educational issues or that it withheld information that it was required to provide to Student's parents. If such are Student's contentions, he must amend his complaint to plead what actions of Santa Barbara form the basis for an exception to the statute of limitations.

However, even assuming that it is proper notice to plead exceptions to the statute of limitations in an opposition to a motion to dismiss, the circumstances alleged by Student in his opposition do not demonstrate that Santa Barbara misrepresented that it had solved Student's educational issues, or that it withheld information from Student's parents. Student contends that Santa Barbara failed to translate assessments into Spanish for Student's parents, but does not allege that Student's parents cannot understand English, or that they were never informed of the assessment results. Student contends that Santa Barbara did not discuss the relevancy of Student's assessment results in relation to potential additional disabilities he might have, but does not show how this failure amounts to "withholding" information. The fact that Santa Barbara interpreted the assessment results differently than what Student contends should have been the interpretation, does not form the basis for a finding that Santa Barbara deliberately withheld information from Student's parents.

For these reasons, after considering Student's opposition to Santa Barbara's motion to dismiss, Student has failed to adequately plead an exception to the statute of limitations.

Accordingly, Student's request for reconsideration is denied.

IT IS SO ORDERED.

DATE: September 10, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings