

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PETALUMA JOINT UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2013020057

ORDER DENYING REQUEST FOR
RECONSIDERATION

On January 31, 2013, Parents on behalf of Student filed a due process hearing request (complaint) naming the Petaluma Joint Union High School District (District).

On February 6, 2013, District filed a motion to dismiss Student's complaint on the ground that the allegation of Student's birthdate is false, that Student is in reality over 18 years of age, and that Parents lack standing to bring this action.

On February 15, 2013, the undersigned administrative law judge issued an order denying the motion as seeking a ruling on the merits, rather than dismissal on allegations facially outside the jurisdiction of the Office of Administrative Hearings (OAH).

On February 25, 2013, District filed a motion for reconsideration. On February 27, 2013, Student filed opposition.

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. (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

District asserts no new facts, circumstances, or law in support of the request reconsideration.

Instead, District submits additional evidence in support of the same facts, circumstances and law argued in its original motion, that is, that Student is 18 years of age.

District is not entitled to reconsideration without a showing of new facts, circumstances or law, and therefore, District's motion for reconsideration is denied.

Even had District been entitled to reconsideration of its original motion upon additional evidence that Student is 18 years of age, the motion would have been denied on its merits. District's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, and neither the IDEA nor the California Education Code provide for summary adjudication or summary judgment.

In order to obtain the relief requested, Parents will be required to prove their right to such relief at hearing. Such a showing must include that Parents hold educational rights or held educational rights during the applicable time period. If, and to the extent, Parents do not possess the necessary educational rights for the entire period at dispute in the due process hearing request, they may cure that deficiency prior to hearing with an assignment of educational rights from Student. The factual inquiry into who holds the educational rights asserted in the due process hearing request will be made at the hearing, and not summarily adjudicated.

IT IS SO ORDERED.

Dated: February 27, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings