

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO FOSTER CITY SCHOOL  
DISTRICT.

OAH Case No. 2016090418

ORDER GRANTING STUDENT'S  
MOTION FOR RECONSIDERATION  
REGARDING ISSUES 1, 2, 3 AND 6  
AND PARTIALLY GRANTING  
DISTRICT'S MOTION TO DISMISS  
ISSUE 1, AND LIMITING ISSUES 2, 3  
AND 6 TO TIME PERIODS FROM  
SEPTEMBER 5, 2014 FORWARD

On December 30, 2016, the undersigned administrative law judge issued an order granting the motion of San Mateo Foster City School District to dismiss Student's Issue 1 as barred by the statute of limitations and limiting issues 2, 3, and 6 to time periods from September 6, 2014 forward. On February 13, 2017, OAH denied a motion to "modify" the order and deny District's motion.

On February 23, 2017, Student filed a motion for reconsideration. As of the time of this order, no response has been received.

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.)

Under California Code of Civil Procedure section 12a, if the last day for the performance of any act provided or required by law to be performed within a specified period of time falls on a holiday, then that period is extended to and including the next day which is not a holiday. This section applies to all provisions of law, however stated or wherever expressed, providing or requiring an act be performed on a particular day or within a specified period of time.

## DISCUSSION

Student's due process hearing request (complaint) alleges procedural and substantive violations of the Individuals with Disabilities Education Act by District, including Issue 1 challenging District's actions at an individualized education program team meetings held in May 2014 and on September 5, 2014. Student filed her complaint on September 6, 2016, more than two years after the IEP was drafted at that meeting. The undersigned ALJ found Student's claims arising prior to September 6, 2014 to be barred by the two-year statute of limitations and dismissed Student's Issue 1 by order dated December 30, 2016.

By this motion Student seeks reconsideration, and articulates that her complaint was filed on Tuesday, September 6, 2017, because Monday, September 5, 2017 was a State holiday. Because Student's last day to file the due process hearing request as to the September 5, 2014 IEP fell on a holiday, the filing date was extended to and including the next day that was not a holiday, or September 6, 2016. Therefore, Student timely filed her complaint as to Issue 1 regarding the IEP developed on September 5, 2014.

Student's advocate has been dilatory in bringing this issue to the attention of OAH. However, under the unique circumstances of this matter, the equities of permitting Student to go forward on a timely filed claim outweigh strict application of the rules regarding the timeliness of a motion for reconsideration.

As to the other issues in the case, all of the claims may be brought from September 5, 2014 forward.

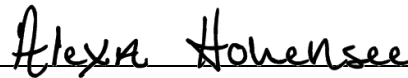
Accordingly, the motion for reconsideration is granted. On reconsideration, District's motion to dismiss Student's Issues 1, 2, 3 and 6 as beyond the statute of limitations is partially denied. These issues will be considered from September 5, 2014 forward.

The parties may address this change in the case with the hearing judge at the prehearing conference.

IT IS SO ORDERED.

DATE: February 24, 2017

DocuSigned by:

A handwritten signature in black ink that reads "Alexia Hohensee". The signature is written over a horizontal line.

A7D463FF094544B...  
ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings