BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SYLVAN UNION SCHOOL DISTRICT.	OAH CASE NO. 2014010077 ORDER DENYING STUDENT'S MOTION FOR RECONSIDERATION

On January 10, 2014, the undersigned administrative law judge issued an order denying Student's motion for stay put (Order). On January 21, 2014, Student filed a motion for reconsideration of the Order. On January 22, 2014, the Sylvan Union School District (District) filed an opposition to Student's motion.

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

Student moves for reconsideration of the Order on two grounds: that (1) new factual information had been obtained justifying reconsideration, and that (2) Student was not given an opportunity to file, and have considered, a reply brief addressing the "complex legal issues related to the interpretation of California and Federal law" pertinent to Student's motion.

In support of the motion for reconsideration, Student submits the declarations of (i) Student's treating physician stating the medical necessity of Student's treatment with cannabidiol (CBD) at school, and (ii) Student's father (Father) explaining that in the past he and school nurses have completed "Designation of Primary Caregiver" agreements (Designation Agreements) for the nurses to administer CBD to Student. The moving papers explain that Student requested that the Office of Administrative Hearings (OAH) give him three additional days to file a reply brief but the Order was issued that same day, and that counsel did not have an opportunity to speak to the treating physician until January 17, 2014, a week after the Order was issued.

In opposition, the District argues that neither the facts nor law provided by Student in support of his motion are new, and that Student has not provided an explanation as to why the treating physician's opinion and declaration were not obtained prior to filing the stay put motion. District submits an unauthenticated document purporting to be a letter from Student's current school nurse to Student's parents, dated December 13, 2013, revoking her consent to a Designation Agreement designating her as a primary caregiver for purposes of administration of medical marijuana to Student.

The factual information provided in Student's declarations is not new. Father's declaration references and attaches Designation Agreements executed for the 2011-2012, 2012-2013 and 2013-2014 school years.[1] The declaration of Student's treating physician explains his basis for Student's treatment with CBD, which began in June 2011, and reports that Student's seizure activity has increased due to the stress involved in leaving school mid-day to be administered CBD, which information was already contained in Father's declaration filed with the motion for stay put.[2]

Student also fails to explain why the declaration of his treating physician could not be submitted on January 6, 2014 with Student's stay put motion. Student's increased seizure activity allegedly began in November 2013, two months prior to the filing of the motion. The physician's declaration fails to state when he became aware of an increase in seizure activity, or why he could not have provided a timely declaration with his opinion. Student fails to submit evidence as to why his counsel lacked an "opportunity" to obtain a declaration from Student's treating physician. Such a broad reason could include minor inconveniences, which would not reasonably justify the delay or reconsideration.

The law cited by Student is not new, focusing in large part on civil rights decisions issued in the 1970's. To the extent Student contends that the undersigned administrative law judge misinterpreted or misapplied the law, that is not a basis for reconsideration, but for seeking review, if and to the extent available.

Student's failure to discuss in his moving papers State and federal law relevant to a request for administration of medical marijuana, a Schedule I controlled substance, did not mandate that OAH put a hold on issuance of the Order pending Student's preparation of a reply brief to do so. The parties to a special education due process proceeding do not have the right to file a reply, and Student cites no authority in support of his argument that he was entitled to delay a ruling because counsel had not addressed relevant law in the moving papers. The hearing in this matter is scheduled to begin in just over 30 days, on February 26, 2014, and Student will have another opportunity at that time to fully present facts and law in

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[1] The Designation Agreements submitted by Student are incomplete and undated, but Father's declaration indicates that they were executed over multiple school years.

[2] Father's declaration stated, in part, that "[s]ince the...change to [Student's] program, [Student's] mother and I have observed a marked increase in [Student's] seizures." (Declaration of Father, dated January 2, 2014, ¶ 21.)

support of Student's contention that he is entitled to administration of CBD at school as part of a free appropriate public education under the Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq.).

For the reasons stated above, Student's motion for reconsideration is denied.

IT IS SO ORDERED.

Dated: January 24, 2014

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings