BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN LEANDRO UNIFIED SCHOOL DISTRICT AND OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014080928 ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING REQUEST TO ADVANCE MEDIATION

On September 5, 2014, the undersigned administrative law judge issued an order denying a request by Student and San Leandro Unified School District to advance the mediation in this matter to a date within the 30-day resolution time period. On September 5, 2014, after the close of business, Student filed a request for reconsideration.

APPLICABLE LAW

Reconsideration

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.)

Advancement of Time Lines

A school district, or local education agency, must convene a meeting to discuss the issues raised in a due process complaint in order to attempt to resolve the dispute. (34 C.F.R. §300.510 (a)(1),(2).) This meeting is commonly known as a resolution session. A resolution session need not be held if the parent and school district agree in writing to waive it (*Id*. at §300.510 (a)(3)(i)) or if the parent and school district agree to use mediation instead of a resolution session (*Id*. at §300.510 (a)(3)(ii)). If the parties agree to waive the resolution session, the 45-day timeline for a due process hearing begins the day after the waiver. (*Id*. at §300.510(c)(1).) However, the timeline does not automatically begin if the parties agree to use mediation instead of a resolution session. (*Id.* at §300.510(c).)

DISCUSSION AND ORDER

Reconsideration

Student has not presented any new facts, circumstances or law in support of the request for reconsideration. However, the contentions raised in Student's request warrant further discussion and therefore, reconsideration is granted.

Advancement of Time Lines

Student contends that San Leandro and the Oakland Unified School District are unavailable to mediate on September 25, 2014, the date set by OAH. Student wishes to mediate sooner than later and therefore asked San Leandro to agree to mediation on September 16, 2014, a date within the 30-day resolution period. Student contends that the request should be granted because: Student has waived resolution session as to both school districts; San Leandro is the school district responsible for providing student a free appropriate public education; Oakland has not set a resolution session within the 15 days mandated by the Individuals with Disabilities Education Act and therefore, the mediation should be advanced; and finally, OAH should advance the mediation at least as to San Leandro.

Student's contentions are not persuasive. Student's unilateral waiver of a right to a resolution session does not automatically result in mediation in lieu of resolution session. Oakland has to affirmatively waive resolution session as well. While San Leandro may have current FAPE responsibilities to Student and may be willing to mediate on September 16, 2014, OAH cannot advance the time lines as to one school district alone. Finally, if Student believes that Oakland has failed to timely provide him with the opportunity for a resolution session, Student should file a request to advance all time lines on those grounds.

The request to advance mediation in this matter is denied. The parties may file a document, with signature by all three parties, requesting to use mediation in lieu of resolution session or Student may file a motion to advance time lines on the grounds that Oakland has failed to timely hold a resolution session and San Leandro has waived its right to hold a resolution session.

IT IS SO ORDERED.

DATE: September 10, 2014

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings