BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019040225

ORDER DENYING STUDENT'S SECOND MOTION FOR RECONSIDERATION

On November 26, 2019, the undersigned Administrative Law Judge issued an order denying Student's motion to amend the complaint eight months after the original complaint was filed and five business days before the due process hearing. On November 25, 2019, Student filed a motion for reconsideration. On November 26, 2019, the undersigned Administrative Law Judge issued an order denying Student's motion for reconsideration. On November 27, 2019, Student filed a second motion for reconsideration. Bellflower Unified School District opposed the motion on December 2, 2019.

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, generally within ten

days. (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

Student again offers no new facts, circumstances, or law to support reconsideration. Student's original motion offered no explanation for moving to amend the complaint eight months after the original complaint was filed, and only five business days before the due process hearing. Student's second motion for reconsideration again attempts to offer an explanation for the basis of the motion to amend. However, as with the first motion for reconsideration, all the information contained in the second motion for reconsideration was available to Student when the motion to amend was filed. Student failed to include the explanation in the original motion. Student's motion for reconsideration does not explain why the information, which is not new, could not have been offered at the time Student filed the original motion to amend.

Student failed to file competent evidence to support the motion to amend the complaint, and then filed a motion for reconsideration with additional information after her motion was denied, and filed a second motion for reconsideration with even more information after the motion for reconsideration was denied. Student has not offered new information that could not have been provided with the original motion to amend.

Student's second motion for reconsideration asserts the same information as was provided in the first motion for reconsideration, which did not amount to a credible explanation for why Student waited eight months and until just before the due process hearing to seek to amend her complaint. Student asserts her attorney requested her

educational records from Bellflower in February 2019. She acknowledges that her 2015 triennial reassessment report stated Bellflower had conducted a speech and language evaluation, but the records Bellflower produced did not contain a 2015 speech and language evaluation report. This fact did not require an independent speech and language assessment by Susan Holler in October 2019 to be discovered. The apparent lack of a speech and language evaluation could have, with the exercise of reasonable diligence, been discovered before Student filed her original complaint in April 2019, and certainly well before October 2019 when Dr. Holler began her assessment.

Student again asserts the 2015 triennial reassessment report mentioned a speech and language assessment, but Bellflower did not produce a speech and language assessment report in response to Student's records request in February 2019. Student provides no facts indicating any efforts Student made specifically to acquire the apparently missing report or to determine whether the absence of a mentioned report was actually due to Bellflower's failure to assess. Student's failure to follow up and pursue what either was known to be, or could easily have been identified as, missing information for nine months is not justification to reconsider the motion Student originally failed to support. Student blames Bellflower for not providing a document on February 25, 2019, but does not explain how that failure, discovered or discoverable immediately after Bellflower produced Student's educational records, accounts for why Student did nothing about it until nine months later on the eve of the already-continued due process hearing.

Further, while Dr. Holler may have been the one who identified the apparent lack of a 2015 speech and language evaluation after she requested Student's records on or about October 21, 2019, Student again offered no explanation for failing to seek to amend the complaint until the parties were due to exchange exhibits and final witness

lists on November 22, 2019. Student's second motion for reconsideration asserts she could not have brought the additional claims asserted in her proposed amended complaint because they were not discovered until she hired an independent speech and language evaluator. Student failed to offer in her original motion any explanation of why she waited until September 2019 to hire Susan Holler, or why she hired an assessor who would not be able to complete an assessment until immediately before Thanksgiving and two business days before the due process hearing, or why she hired an assessor who would not be able to confer with Parent and Student's attorney before the due process hearing, or why she failed to move to continue the due process hearing or amend her complaint sooner. Student also did not offer this information in either her first or second motions for reconsideration.

Student again asserts failing to reconsider the November 26, 2019 Order and denying her motion to amend prejudices her by disallowing her to have new allegations regarding her individualized education program from April 2017 relate back to the filing of her original complaint in April 2019, thereby cutting off claims due to the statute of limitations. While this may be the practical effect of Student's failure to reasonably discover her additional claims and amend her complaint sooner, Student offers no explanation of how her attorney's failure to investigate the apparent lack of a 2015 speech and language evaluation since the end of February 2019, or to obtain additional information about Student's speech and language needs until two business days before the due process hearing, justifies amending the complaint the day before hearing on a matter that has been pending for eight months.

ORDER

Student has not established the November 26, 2019 Order should be reconsidered. The second motion for reconsideration is denied. All dates set in this matter are confirmed.

IT IS SO ORDERED.

DATED: December 2, 2019

DocuSigned by:
Kara Hatfield
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Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings