BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: VISALIA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016110779 ORDER DENYING REQUEST FOR RECONSIDERATION

On November 17, 2016, Visalia Unified School District filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint) naming Parent on behalf of Student. This matter was set for hearing beginning December 13, 2016. On December 2, 2016, OAH denied Visalia's request to continue the hearing date. On December 5, 2016, Visalia filed a motion to withdraw its case and requested that OAH dismiss the complaint without prejudice.

On December 5, 2016, the Division Presiding Administrative Law Judge issued an Order of Dismissal of this matter without prejudice. On December 6, 2016, Student filed an objection to the request for dismissal without prejudice which is treated as a motion for reconsideration. Student requests that the matter proceed to hearing on the original scheduled date or be dismissed with prejudice.

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.)

Neither state or federal special education statutes or regulations nor the California Administrative Procedures Act specifically address motions to withdraw complaints be it before, during, or after the commencement of a due process hearing. However, Code of Civil Procedure, section 581, et seq., addresses such motions in the context of state civil proceedings. Section 581, subdivision (c), states that a plaintiff may dismiss his or her complaint, or any portion of it, with or without prejudice prior to the actual commencement

of trial. Section 581, subdivision (e), states that after the actual commencement of a trial, a court will dismiss a complaint, or any portion of it, with prejudice upon a plaintiff's request, unless all parties consent to dismissal without prejudice or unless the court finds good cause for a dismissal without prejudice.

DISCUSSION AND ORDER

Student alleges no new facts, circumstances, or law in support of the request for reconsideration. Visalia has the right to withdraw its complaint. Because Visalia withdrew its complaint prior to the commencement of hearing, OAH issued an order dismissing the complaint without prejudice. Accordingly, Student's request for reconsideration is denied.

IT IS SO ORDERED.

DATE: December 9, 2016

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings