BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN MARCOS UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013101083 ORDER DENYING REQUEST BY STUDENT TO RESUBMIT OMITTED ISSUE OF THE PREHEARING STATEMENT

On January 16, 2014, Student filed with the Office of Administrative Hearings (OAH) a motion to amend issues in the original Prehearing Conference (PHC) order. On January 27, 2014, the undersigned administrative law judge issued an Amended Order Following Prehearing Conference (amended PHC order) which listed the issues which would be heard at the January 28, 2014 due process hearing in this matter.

On February 20, 2014, Student filed "Petitioner's Request to Resubmit Omitted Issue of the PHC Statement." Basically, the pleading seeks OAH to reconsider the issues contained in the January 27, 2014 amended PHC order and will be considered as motion for reconsideration.

On February 21, 2014, the District filed its opposition. The District contends that it would be prejudiced by the addition of a new issue following hearing. The District also contends that should the new issue be permitted, its due process rights would be violated.

Procedural History of the Case

On October 31, 2013, Parent on behalf of Student (Student) filed with the OAH a Request for Due Process Hearing (complaint) in OAH case number 20132013101083 (first case) naming the San Marcos Unified District (District) as respondent.[1]

On November 12, 2013, the District filed with OAH a Request for Due Process Hearing (DPH) in OAH case number 2013110340 (second case). On November 18, 2013,

[1] Student had originally filed a prior Request for Due Process Hearing with OAH on January 22, 2013 naming the District and Banyan Tree Foundations Academy as respondents in OAH Case Number 2013010566. That complaint alleged similar issues as that in the first case. Student withdrew without prejudice Case Number 2013010655 on May 9, 2013 in San Marcos, California.

the District filed a motion to consolidate the first and second cases. On November 20, 2013, OAH granted the District's motion to consolidate.

On January10, 2014, a prehearing conference hearing (PHC) was held with an Order Following Prehearing Conference being issued by OAH by the undersigned ALJ. On January 16, 2014, Student filed a request to amend issues in the Prehearing Conference Order. .

On January 27, 2014, a second PHC was held. Each party received a draft of the Amended Order Following Prehearing Conference. The undersigned ALJ explained to the parties that he had considered Student's request to amend issues but had declined to include any issues which had not been raised in Student's complaint, which included the issue which is the subject of the February 20, 2014 motion. After reviewing the issues included in the amended PHC order, both parties agreed that the issues in the amended PHC order would be the issues litigated at the hearing. An amended PHC order was then issued.

OAH, by the undersigned ALJ, conducted the due process hearing from January 28, 2014 through February 5, 2014. Closing briefs are due to be filed no later than February 26, 2014 and rebuttal briefs on March 4, 2014, when the matter will be submitted for decision.

During the hearing, Student's counsel posed questions to a witness regarding the lack of notice for an IEP meeting held on December 4, 2012. The District's counsel objected to the questions on grounds that such notice was not at issue in the hearing. Counsel's objection was sustained. The District did not offer any evidence as to a December 4, 2012 IEP meeting.[2]

Following the hearing, the parties reviewed with the ALJ the issues where Student asked clarification of several issues and withdrew certain other issues. Student had an opportunity to address the December 14, 2012 IEP meeting issue at that time, but she did not.

On February 20, 2014, Student filed "Petitioner's Request to Resubmit Omitted Issue of the PHC Statement." Student seeks to have added as an issue: "Whether holding an IEP meeting on 12/14/12 without providing Mother notice of the meeting denied Mother meaningful participation and a loss of educational opportunity [for Student] to learn a program that was to be implemented at home for Student?"

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

[2] At the hearing, the evidence was that the December 14, 2012 meeting involved an Assistive Technology expert to instruct Student on how to operate a computer reading program. The District prepared an IEP amendment form to document the session.

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 alleges no new facts, circumstances, or law in support of the request for reconsideration.

Student also failed to offer any reason that the motion was not submitted within two weeks of the issuance of the order. The motion is not timely because it was not received within two weeks after issuance of the order.

Additionally, the District would be prejudiced if a new issue is added two weeks following a due process hearing. Had the District known that this issue would be litigated, it may have produced evidence regarding this issue. Thus, the District would be prejudiced if Student's motion would be granted.

Accordingly, Student's request for reconsideration is Denied.

IT IS SO ORDERED.

DATE: February 21, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings