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 REQUEST 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. Due to the impending due process hearing following a four-day holiday weekend, this order is being issued before Bellflower Unified School District has had the opportunity to file a response to Student's motion for reconsideration.

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 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 motion for reconsideration attempts to offer an explanation for the basis of the motion to amend. All the information contained in the 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.

This is not the first time Student failed to file competent evidence to support a motion, and then filed a motion for reconsideration with additional information after her motion was denied. Student's October 8, 2019 request for continuance was denied due to inadequate information to support the request. Only with a motion for reconsideration did Student file a declaration under penalty of perjury to explain the basis for the requested continuance. Here again, 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.

Additionally, Student's motion for reconsideration offers no 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.

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 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 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 the apparent lack of a speech and language evaluation in 2015 would, in any event, not be barred by the Individuals with Disabilities Act's two-year statute of limitations.

ORDER

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

IT IS SO ORDERED.

DATED: November 27, 2019

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