BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PALO ALTO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017070428 ORDER DENYING REQUEST FOR RECONSIDERATION OF STUDENT'S MOTION TO AMEND COMPLAINT

This case was originally filed on July 13, 2017. A joint motion for continuance was granted by the Office of Administrative Hearings on August 24, 2017. This continued the prehearing conference to November 17, 2017. Prehearing conference statements were due to OAH by November 14, 2017. Both parties timely filed their prehearing conference statements. In the prehearing conference statement of issues, Student presented issue number three as "Did Palo Alto fail to offer Student a FAPE for the 2017-2018 school year."

On November 15, 2017, a joint request to continue the prehearing conference until Monday, November 20, 2017, in support of a possible settlement of the above titled case was granted. On November 17, 2017, Student filed a motion to amend complaint with OAH. Palo Alto filed a non-opposition on November 17, 2017. On November 20, 2017, the prehearing conference was held. Student's attorney argued that she was unable to timely file the motion to amend the complaint because she did not have client authority. At the prehearing conference, Student's motion to amend complaint was denied for a failure to show good cause why the motion to amend was not timely filed. Student filed a motion for reconsideration on November 21, 2017. District filed non-opposition to Student's request on November 21, 2017.

RECONSIDERATION

California Code of Civil Procedure, section 1008 (a) provides a remedy to an affected party to seek reconsideration of an order that was refused or denied by judge. Within 10 days of the order, the affected party may move for reconsideration on the based "upon new or different facts, circumstances, or law."

Under the Individuals with Disabilities Education Act, 20 U.S.C. Section 1415(c)(2)(E) a complaint may be amended if the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution session; or the hearing officer grants permission…at any time not later than 5 days prior before a due process hearing occurs.

Student's motion for reconsideration provided no new facts, circumstances or law to support the motion for reconsideration. Student's motion for reconsideration mischaracterizes Palo Alto's non-opposition to Student's request as consent. Moreover, in its Response to Student's request for reconsideration, Palo Alto, again, merely did not object to Student's request. At no time did Palo Alto consent to Student's motion to amend. Black's Law Dictionary defines consent as "A concurrence of wills," or "Agreement; approval." Meanwhile, Black's defines opposition as an "act of opposing or resistance. Thus, a non-opposition is simply no "resistance" against Student's position. This is not the same as consent.

Student filed this case in July. Student and Palo Alto presented to OAH on November 15, 2017 that settlement was being pursed in this matter and received a short continuance of the prehearing conference. At time of November's joint request for continuance, the time to timely file a motion to amend had already expired. Student provided no evidence of good cause of why they were unable to file a motion to amend their complaint prior to November 14, 2017 the date the prehearing conference statements were due.

IT IS SO ORDERED.

DATE: November 22, 2017

DocuSigned by:
Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings