BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. IRVINE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013040071 ORDER DENYIONG REQUEST FOR RECONSIDERATION

On March 29, 2013, Parents on behalf of Student filed a due process hearing request (complaint) naming the Irvine Unified School District (District).

On April 5, 2013, Student filed a motion for stay of School Attendance Review Board (SARB) proceedings. On April 8, 2013, the Irvine Unified School District (District) filed an opposition.

On April 9, 2013, the undersigned administrative law judge (ALJ) issued an order denying Student's motion to stay school attendance review board (SARB) proceedings, for lack of jurisdiction of the t the Office of Administrative Hearings (OAH) over SARB proceedings and failure by Student to submit admissible evidence in support of her motion.

On April 11, 2013, Student filed a request for reconsideration, on the ground that the ALJ had made the order without considering Student's reply to District's opposition. Student's reply was concurrently filed on April 11, 2013.

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.)

DISCUSSION AND ORDER

Student asserts no new facts, circumstances, or law in support of the request reconsideration. Instead, Student incorrectly asserts a right under Federal Rules of Civil Procedure (FRCP), rule 56, to consideration of her response to District's opposition (reply).

The FRCP do not apply to state administrative hearings. A quick review of the information provided on the OAH website regarding special education due process proceedings[1] would have informed Student that OAH will not delay ruling on prehearing motions to allow for replies:

> The party wishing to file an opposition to a motion has three business days from the mailing of the motion to send a copy of the response to OAH and all other parties. After three business days OAH may rule on the motion, but its timing will depend on the nature of the motion, its urgency, and the nearness of the hearing date.

Student could have, and should have, included all relevant evidence and made all applicable arguments in her moving papers. No explanation for Student's failure to do so is provided in the motion for reconsideration.

Even if the reply is considered, Student's reply consists of no more than additional evidence in support of the same facts, circumstances and law argued in its original motion, that is, that Student and her parents have been called before District's SARB due to Student's alleged absences, which Student contends is punitive. The reply papers do not even address the dispositive issue of OAH's lack of authority to stay the proceedings of other tribunals. Student's reply does not demonstrate any reason for reconsideration, as it merely makes the same argument as Student's original motion.

Accordingly, Student's motion for reconsideration is denied.

IT IS SO ORDERED.

Dated: April 12, 2013

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

[1] www.dgs.ca.gov/oah/SpecialEducation.aspx, "Frequently Asked Questions"