BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014020774 ORDER DENYING REQUEST FOR RECONSIDERATION

On February 24, 2014, Student filed a due process hearing request (complaint) naming the Los Angeles Unified School District (District) and Granada Hills Charter High School (Charter). On March 3, 2014, Charter filed a notice of insufficiency (NOI) as to Student's complaint. On March 4, 2014, the undersigned administrative law judge (ALJ) issued an order finding Student's complaint insufficiently pled as to Charter (Order). On March 4, 2014, after the Order had been issued and served, Student filed opposition to Charter's NOI.

On March 4, 2014, Student filed a motion for reconsideration of the Order. In addition to addressing Charter's claims of insufficiency, Student contends that OAH should have waited the customary time for the filing of an opposition. On March 6, 2014, Charter filed an opposition to Student's reconsideration motion. On March 7, 2014, Student filed a reply.

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.)

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A). When a party timely files a challenge to the sufficiency of the complaint, the ALJ must make a determination within five days of receipt of the challenge. (20 U.S.C. § 1415 (c)(2)(D).) ALJ's must make the determination from the face of the notice whether the notification meets the pleading requirements of subsection

(b)(7)(A). (*Ibid*.) Once an ALJ determines the sufficiency of the complaint, they are required to immediately notify the parties in writing of such determination.

DISCUSSION AND ORDER

Student moves for reconsideration of the Order, arguing that Student was not given an opportunity to file, and have considered, an opposition to Charter's NOI.

Student fails to provide new facts or circumstances justifying reconsideration. Student's argument that OAH should have delayed issuing an order on Charter's NOI to consider Student's opposition is inconsistent with the Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq. (IDEA)). Although OAH customarily allows the opposing party three business days to file oppositions to motions, this rule does not apply to NOI's because the IDEA requires OAH to respond to NOI's within five days, and to issue its order immediately upon completion of the review of the complaint. Further, ALJ's are required to base their determination of the sufficiency of complaints solely from the allegations set forth in the complaint, and not on the arguments of the parties. As such, reconsideration is inappropriate because the Order was properly issued.

Student also fails to provide new law justifying reconsideration. The law cited in Student's motion for reconsideration is not new, and consists largely of citations to non-binding out of-state decisions and agency orders. To the extent Student contends that the undersigned ALJ misapplied the law, that is not a basis for reconsideration, but for seeking review, if and to the extent available.

For the reasons stated above, Student's motion for reconsideration is denied.

IT IS SO ORDERED.

DATE: March 7, 2014

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