BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2018050543 ORDER DENYING MOTION FOR RECONSIDERATION

On July 11, 2018, the undersigned administrative law judge issued an order denying Student's motion to dismiss the case filed by Chaffey Joint Union High School District on May 11, 2018. Student moved to dismiss Chaffey's case based on the fact that there was a pending action in federal district court involving the same parties and the same issues raised in Chaffey's instant case. On July 13, 2018, Student filed a motion for reconsideration of the ALJ's order denying Student's motion to dismiss. Student contends the ALJ based her decision on mistaken factual grounds.[1]

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

Student argues that his motion to dismiss should be granted because the federal court proceeding was initiated by Chaffey and not Student. Chaffey filed a request for a restraining order against Student in San Bernardino County Superior Court on May 11, 2018. After granting Student a continuance, the court granted the request for a restraining order on

[1] As the ALJ is denying Student's motion for reconsideration, it is unnecessary to wait three days to determine if Chaffey intends to file an opposition to the motion.

June 28, 2018. Student removed the injunction proceeding to federal district court, and filed a cross-complaint as well. Student argues that the ALJ mistakenly referred to the federal district court proceeding as being initiated by Student rather than Chaffey, and that reconsideration is therefore appropriate.

Student is incorrect that the ALJ based her decision denying his motion to dismiss on a mistaken belief that Student initiated the federal court proceeding. The order denying Student's motion to dismiss clearly lays out the fact that Chaffey filed a request for restraining order in superior court, that Student removed that proceeding to federal court, and that Student filed a counter-claim in federal court. However, it is irrelevant who filed the federal court proceeding. The ALJ's order denying the motion to dismiss was based on Student's lack of persuasive authority that an administration hearing must be dismissed because of a pending case in another forum.

In his motion for reconsideration, Student raises the same arguments he previously raised in his original motion to dismiss, to wit, that he does not need to exhaust administrative remedies to proceed with his federal court claim. That argument does not support his motion to dismiss. As it is the same argument previously made, it also does not support reconsideration.

Student then argues in his motion for reconsideration that Chaffey, by filing its request for a restraining order, has waived its right to litigate its instant complaint before the Office of Administrative Hearings. Student offers no persuasive authority for this argument.

Student then contends that by filing its request for a restraining order, Chaffey "waived any future right to protection by the failure to exhaust." In making this contention, Student conflates an argument Chaffey may make in response to Student's counter-claim in federal court with an argument as to why the instant OAH case should be dismissed. There are no exhaustion requirements for filing a request for due process with OAH. For this reason, the ALJ did not base her order denying Student's motion to dismiss on Chaffey's argument that Student was required to exhaust administrative remedies prior to filing a case in federal court. The exhaustion argument is one the federal district court may consider, but is not relevant to the instant OAH proceedings.

Finally, the declaration of Student's father in support of the motion for reconsideration contains numerous confusing statements that are not supported by the record in the instant case. For example, Father's declaration states "Within 30 days of service allowed by statute, OAH denied District's request to issue a TRO, or unilateral placement without a hearing." OAH does not issue temporary restraining orders, there is no indication that Chaffey requested that one issue in this, and there is no order in the instant case that can be interpreted as OAH refusing to issue one. Father's declaration also includes reference to issues beyond the jurisdiction of OAH such as his statement that Chaffey did not properly serve Student with the summons regarding its request for restraining order filed in superior court.

The undersigned ALJ appreciates the fact that Student is appearing in this matter through his father and is not presently represented by an attorney. However, none of the issues raised in Student's motion for reconsideration address new facts or new issues of law justifying reconsideration of the order denying Student's motion to dismiss.

ORDER

Student's motion for reconsideration is DENIED. This case will proceed as scheduled for hearing, starting on July 17, 2018, at 9:30 a.m., as stated in OAH's Order Following Prehearing Conference, dated July 9, 2018.

DATE: July 13, 2018

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings