

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009110728

ORDER GRANTING REQUEST FOR
RECONSIDERATION AND DENYING
DISTRICT'S NOI

On January 4, 2010, the undersigned administrative law judge issued an order finding that Student's complaint was insufficient as to one of six articulated issues, and giving Student 14 days to file an amended complaint, granting in part District's Notice of Insufficiency (NOI) filed on December 29, 2009. On January 6, 2010, Student's attorney filed a motion for reconsideration on behalf of Student.

APPLICABLE LAW

The Office of Administrative Hearings (OAH) 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 complaint is deemed sufficient unless the respondent notifies the due process hearing officer (OAH) and the other party in writing, within 15 days of receiving the complaint, that the respondent believes the complaint has not met the notice requirements. (§ 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

DISCUSSION

Student's request for reconsideration is timely. Student's opposition was not available to the undersigned hearing officer at the time the Order was issued. Therefore, good cause exists for reconsideration of the Order granting, in part, District's NOI.

On reconsideration, the issue is whether District's NOI was timely, based on the date of District's receipt of Student's Complaint. Student correctly notes that its complaint was filed with OAH on November 23, 2009. District's NOI, consisting of 16 faxed pages including proof of service, was received by faxination by the Office of Administrative

Hearings at approximately 4:40 p.m. on December 29, 2009. District's NOI includes a declaration under penalty of perjury, at fax page 15, from District's attorney, in which he references Exhibit "A" to support District's contention that it received the complaint on December 14, 2009. However, no "Exhibit A" was attached to the fax received by the OAH. This hearing officer therefore relied on the declarant's statements at paragraph 4, in which declarant represented that District received the complaint on December 14, 2009.

On the other hand, Student's opposition to the NOI includes a declaration under penalty of perjury by Student's attorney who authenticated a copy of a facsimile confirmation page that demonstrates that the complaint was served by fax on Elizabeth Moore, Director of Special Education, Corona-Norco Unified School District, at 11:49 a.m. on November 23, 2009. Student has adequately demonstrated with credible evidence that service of the complaint to the District by facsimile transmission was successfully completed on November 23, 2009. Therefore, the District's NOI, filed on December 29, 2009, was not timely.

ORDER

1. Student's request for reconsideration is granted.
2. District' NOI was untimely pursuant to §1415(c)(2)(C). The NOI is denied.
3. All dates shall remain as scheduled.

Dated: January 7, 2010

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings