

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MOUNTAIN VIEW-WHISMAN SCHOOL  
DISTRICT.

OAH CASE NO. 2011020110

ORDER DENYING REQUEST FOR  
RECONSIDERATION

On May 20, 2011, the undersigned administrative law judge issued an order granting Student's motion to amend the complaint. This order was issued by the Office of Administrative Hearings (OAH) shortly before the District filed a nonopposition to the motion to amend, although the nonopposition requested that the dates previously set for hearing remain as calendared. Following the issuance of the order granting the motion to amend the complaint and vacating the previously set dates, OAH issued a new scheduling order. On May 23, 2011, the District filed a motion for partial reconsideration asking that the due process hearing dates related to the original complaint remain as previously set, or, in the alternative, that the hearing commence on June 22, 2011, and continue on subsequent days thereafter.

APPLICABLE LAW

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.)

A local educational agency (LEA) is required to convene a resolution meeting with the parents and relevant members of the individualized education program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I);<sup>1</sup> 34 C.F.R. § 300.510(a)(1) (2006).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation in lieu of the resolution session. (§ 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3) (2006).) There are no provisions of law that allow a parent or an LEA to unilaterally waive the resolution meeting. If the parents do

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<sup>1</sup> All statutory citations are to title 20 United States Code unless otherwise indicated.

not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3) (2006).)

## DISCUSSION AND ORDER

On May 16, 2011, a prehearing conference (PHC) was held in this matter. The due process hearing was set to begin on May 31, 2011, and continue through June 2, 2011. Additional dates were also set for the week of June 22, 2011. At the PHC the attorney for Student stated that he might be filing an amended complaint. The District was uncertain whether or not it would oppose the filing of an amended complaint. The parties agreed that any motions following the PHC would be filed no later than May 23, 2011, and the parties agreed that any responses to said motions would be filed within two business days, rather than the three business days that OAH generally permits, so that the ALJ could rule on any such motion before the hearing began. On May 17, 2011, Student filed a motion to amend his complaint and included a copy of the proposed amended complaint with the motion.

In its motion for partial reconsideration, the District says it forgot about the two day limit for a response, in part because the ALJ did not issue an order following PHC immediately after the conclusion of the PHC.<sup>2</sup> However, the District alleges no new facts, circumstances, or law in support of the request reconsideration. Further, OAH cannot restore the previously vacated hearing dates, or advance the hearing to June 22, 2011, because the filing of the amended complaint triggers the 30-day resolution period. Accordingly, the District's request for reconsideration is denied.<sup>3</sup>

IT IS SO ORDERED.

Dated: May 23, 2011

/s/

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REBECCA FREIE  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>2</sup> OAH does not have a set time line within which it issues orders following PHCs. While the order following PHC would have served as a reminder to District of the shortened response time line, the order for a shortened time line was made from the bench during the PHC and was in effect immediately.

<sup>3</sup> Nothing precludes the parties from holding an early resolution session or filing a written stipulation **signed by both parties** waiving the resolution session, and asking that OAH advance the currently set dates for mediation, PHC and the due process hearing.