

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LA HONDA-PESCADERO UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2009050266

ORDER DENYING REQUEST FOR
RECONSIDERATION

On May 4, 2009, Parent, on behalf of Student, filed a Due Process Hearing Request (complaint) against the La Honda-Pescadero Unified School District (District). On May 14, 2009, attorney Eugene Whitlock, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's complaint. On May 19, 2009, the Office of Administrative Hearings (OAH) denied the District's NOI. On May 20, 2009, the District filed a second NOI, which is being treated as a motion for reconsideration. Student has not filed a response.

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.)

DISCUSSION AND ORDER

The District asserts in its motion for reconsideration that Student did not serve a copy of the complaint on the District. The District's request alleges no new facts, circumstances, or law in support of the request reconsideration. It is noted that failure to serve a complaint is properly challenged by way of motion to dismiss, rather than by NOI, because an NOI provides for challenge of the sufficiency of the complaint on its face. A motion to dismiss may be accompanied by declarations, which are typically necessary for OAH to decide a motion to dismiss. For example, a motion to dismiss might be accompanied by a declaration signed under penalty of perjury by an individual declaring that he or she properly served a complaint, or by a District representative declaring that he or she never received a complaint.

Moreover, Student is entitled to respond to a motion to dismiss, and the provisions of law regarding NOIs do not authorize a response.

Therefore, District's request for reconsideration of the denial of the NOI is denied. However, the District may file a motion to dismiss, which shall include a declaration signed under penalty of perjury, as appropriate, if it wishes to raise again the issue regarding service.

Dated: May 28, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings