

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

TUOLUMNE COUNTY CALIFORNIA
CHILDREN'S SERVICES.

OAH CASE NO. 2012100238

ORDER DENYING REQUEST FOR
RECONSIDERATION

On October 5, 2012, Student filed a Due Process Hearing Request (complaint) against the Tuolumne County California Children's Services (CCS) with the Office of Administrative Hearings (OAH).¹ This matter is set for a prehearing conference for March 6, 2013, and hearing on March 19 and 20, 2013.

On January 24, 2013, CCS served a Subpoena Duces Tecum (SDT) on Student, which requested specific records regarding Student, which were to be produced to CCS by February 12, 2013. On February 5, 2013, Student filed a Motion to Quash the SDT on the grounds that the SDT was unduly vague and overly broad and burdensome. On February 6, 2013, CCS filed an opposition to the Motion to Quash. On February 13, 2013, the undersigned administrative law judge (ALJ) issued an order that quashed CCS' SDT for being prohibited prehearing discovery. On February 13, 2013, CCS filed a motion that requested that OAH issue a SDT for Student to produce requested records by February 26, 2013. OAH is treating CCS' request for a SDT as motion for reconsideration because CCS is still requesting prehearing discovery. Student submitted a response on February 19, 2013.

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.)

¹ Student dismissed the Sonora Elementary School District and the Tuolumne County Office of Education pursuant to a settlement agreement with these parties.

DISCUSSION AND ORDER

CCS alleges no new facts, circumstances, or law in support of its request reconsideration because CCS is still requesting prehearing discovery, which is not permitted under the Individuals with Disabilities in Education Act (IDEA) and the California statutes and regulations that govern special education hearings. CCS failed to provide any authority to reconsider this ALJ's determination that, while a party to a due process hearing under the IDEA has the right to present evidence and compel the attendance of witnesses *at the hearing*, and mutual disclosure of documents and witnesses five business days before hearing (20 U.S.C §1415(f)(2) and (h)(2); Ed. Code, § 56505, subds. (e)(2), (3) and (7)(italics added)), there is no right to pre-hearing discovery under the IDEA. Accordingly, CCS' request for reconsideration is denied.

IT IS SO ORDERED.

Dated: February 19, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings