

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

ORANGE COUNTY DEPARTMENT OF
EDUCATION,

v.

STUDENT,

OAH CASE NO. 2008120021

STUDENT,

v.

ORANGE COUNTY DEPARTMENT OF
EDUCATION & CALIFORNIA
DEPARTMENT OF EDUCATION.

OAH CASE NO. 2009020130

ORDER DENYING STUDENT'S
REQUEST FOR RECONSIDERATION

On May 22, 2009, Administrative Law Judge Richard T. Breen issued a Decision in the above matters. The Decision found that neither the Orange County Department of Education, nor the California Department of Education was responsible for providing special education to Student under the Individuals with Disabilities Education Act during the relevant time period. Student chose not to name any other educational agencies as respondents, despite presenting evidence regarding the school district of residence of the “responsible adult” appointed by the Orange County Juvenile Court to make educational decisions for Student. The Decision was based on an interpretation of California law as it existed during the relevant time periods.

On June 26, 2009, Student filed a Motion for Reconsideration (Motion). The Motion contends that reconsideration is warranted because after the Decision issued, a United States District Court rendered a decision on a motion for summary judgment in another case based on a different interpretation of California law on the residency issue. For the reasons set forth below, reconsideration is denied.

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 [general rule that administrative agency decisions may be reconsidered]; Code Civ. Proc., § 1008 [general rule permitting civil courts to reconsider orders based upon a showing

of new or different facts, circumstances, or law].) 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.)

Here, Student seeks reconsideration of the May 22, 2009 Decision because on June 18, 2009, after the Decision was issued, the United States District Court for the Central District of California issued a ruling in another case (*Orange County Department of Education, et al., v. A.S.*, United States District Court, Central District of California, SACV08-0077-JVS (A.S.)) that reached a different result. Reconsideration is not warranted because the District Court's decision is not new or binding authority.

First, at the time the ALJ rendered the Decision in the instant matter, a published order on a motion to dismiss for failure to state a claim already existed in the *A.S.* matter. The published order, *Orange County Department of Education v. A.S.* (C.D. Cal. 2008) 567 F.Supp.2d 1165, interpreted California law on the subject of residency for purposes of determining the educational agency that was required to provide special education to students who were wards of the juvenile court and whose parents no longer had rights to make educational decisions. The ALJ rejected the reasoning of the published order in *A.S.* (Decision, Legal Conclusion 22, p. 11.) The new ruling submitted by Student as justification for reconsideration relies in large part on adopting the same reasoning from the published order that was already rejected by the ALJ. (Motion for Reconsideration, Attachment, p. 4.) Thus, the June 18, 2009 ruling in *A.S.* is not new law that the ALJ failed to consider.

Further, ALJ's decision in the instant matter relied on interpretation of the entire statutory scheme prior to the January 1, 2009 effective date of the amendments to Education Code section 56028. The parties in the instant case argued that the Legislative Counsel's Digest for amendments to Education Code section 56028 effective January 1, 2009 should control interpretation of the statute historically. However, the Decision obviously rejected this contention. There is nothing to reconsider.

Finally, the United States District Court ruling in *A.S.* is not controlling authority. It is well-established that "state courts are the ultimate expositors of state law." (*Mullany v. Wilbur* (1975) 421 U.S. 684, 691 [95 S.Ct. 1881].) Thus, although they may be persuasive, United States District Court decisions purporting to interpret state law are not binding on state courts. (*Johnson v. American Standard* (2008) 43 Cal.4th 56, 69.) There is no reason the above authorities would not apply with equal force to a state administrative decision that relies solely on an interpretation of state law. Here, as discussed above, and in the Decision, the ALJ concluded that the United States District Court's interpretation of the Education Code in *A.S.* was not correct, as it failed to analyze the statutory scheme as a whole. Thus, the ALJ is not "bound" to follow a United States District Court interpretation of state law that the ALJ respectfully disagrees with, particularly when the ALJ considered the same points and issued a final decision prior to the June 18, 2009 United States District Court ruling in *A.S.*

ORDER

Student's request for reconsideration is DENIED.

Dated: July 9, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings