

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SADDLEBACK VALLEY UNIFIED
SCHOOL DISTRICT; ORANGE COUNTY
HEALTH CARE AGENCY; ORANGE
COUNTY SOCIAL SERVICES AGENCY.

OAH CASE NO. 2010030698

ORDER DENYING REQUEST FOR
RECONSIDERATION FILED BY
ORANGE COUNTY SOCIAL
SERVICES AGENCY AND
SADDLEBACK VALLEY UNIFIED
SCHOOL DISTRICT

On March 18, 2010, the undersigned administrative law judge (ALJ) issued an order denying the motion to dismiss brought by the Orange County Social Services Agency (OCSSA) and an order denying the motion to dismiss brought by Saddleback Valley Unified School District (District). On March 22, 2010, OCSSA filed a motion for reconsideration. On March 23, 2010, the District filed a motion for reconsideration. On March 22, 2010, Parent on behalf of Student (Student) filed an opposition to OCSSA's motion.

APPLICABLE LAW

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; 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

Both the District's and OCSSA's motions are based on an order issued in a different special education due process case on March 16, 2010, involving a different pupil. The moving parties contend that the facts and legal issues in that other case (OAH case number 2010021075) are very similar to those alleged in the instant case. In that other case, the ALJ granted the motion to dismiss brought by the same respondents on the basis that OAH did not have jurisdiction to hear a case related to the use of social security benefits.

The order issued by the ALJ in the other case is not an appropriate basis upon which to grant reconsideration. Orders and decisions rendered in special education due process

proceedings may be cited as persuasive authority, but have no precedential value and are not binding in subsequent proceedings. (Cal. Code Regs., tit. 5, § 3085.)

The District and OCSSA have failed to provide any new or different facts, circumstances, or law to show that OAH lacks subject matter jurisdiction to hear the instant case. Both federal and state special education laws require that a *free* appropriate public education be afforded to a child found eligible for special education and related services. Student has alleged that the respondents are not providing a free education to Student.

OAH has jurisdiction to determine if the requirement for a free appropriate public education has been met. (20 U.S.C. § 1415(b)(6)(A); Ed. Code, § 56501, subd. (a)(1).) For example, if Student had alleged that the respondents were requiring Student to use a private trust fund to pay for Student's education, OAH would have jurisdiction to determine if a free education was being provided. OAH's jurisdiction to hear and decide a "free education" issue is not dependent on the source of the funding which allegedly is being used.¹

Accordingly, both motions for reconsideration are hereby denied.

It is so ordered.

Dated: April 6, 2010

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

¹ As stated in the order denying the motion to dismiss issued on March 18, 2010, nothing in this order is intended to make a ruling on the merits of Student's claims. The motion to dismiss was denied on the narrow issue of OAH's jurisdiction to hear this type of case.