

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL  
DISTRICT, CALIFORNIA DEPARTMENT  
OF MENTAL HEALTH, AND LOS  
ANGELES COUNTY DEPARTMENT OF  
MENTAL HEALTH.

OAH CASE NO. 2010110435

ORDER DENYING CALIFORNIA  
DEPARTMENT OF MENTAL  
HEALTH'S PETITION FOR  
RECONSIDERATION OF DECISION

On March 4, 2011, the undersigned administrative law judge issued a decision in this matter following the due process hearing of January 18 and 19, 2011, at which Student, Torrance Unified School District (District), California Department of Mental Health (CDMH), and Los Angeles Department of Mental Health (LADMH) appeared through their respective counsel. The parties were given an opportunity to make opening statements and to present testimonial and documentary evidence. The matter was continued to and submitted on February 9, 2011, with the filing of closing briefs. The decision found all three respondents responsible for the untimely provision of mental health services to Student, commonly referred to as AB 3632 services.<sup>1</sup>

On March 29, 2011, CDMH filed a petition for reconsideration of the decision. On March 30, 2011, Student filed an opposition to CDMH's petition. On April 4, 2011, CDMH filed a reply to Student's opposition.

CONTENTION OF PARTIES

CDMH contends that the Administrative Procedures Act (APA) empowers OAH to reconsider a due process decision, citing a prior OAH order wherein a special education decision was reconsidered on motion of the parties. CDMH further asserts that a recent California appellate decision, published February 25, 2011, directly addresses the basis of the decision herein, requiring reconsideration. (*California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507, petn. for review pending, petn. filed April 16, 2011 (S191952).) CDMH claims that this recent case establishes that it is free of responsibility for failing to timely provide related mental health services.

---

<sup>1</sup> California provides for interagency responsibility regarding the provision of special education related mental health services. (Gov. Code §§ 7570–7588 (Ch. 26.5).) The statutory scheme is known as AB 3632 after the Assembly Bill that created the law.

Student contends that OAH lacks jurisdiction to reconsider a special education decision after it is issued, noting that the prior OAH order purportedly reconsidering a decision was actually a stipulated request to correct a mistake. Further, *California School Boards Ass'n* does not address the basis for the decision herein holding CDMH responsible for the untimely provision of related mental health services.

#### APPLICABLE LAW

OAH will generally reconsider rulings on motions 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.) As discussed below, decisions are treated differently than rulings on motions.

The APA (Gov. Code §§ 11340 *et seq.*) is only applicable in part to special education hearings and provides guidance to OAH on procedural issues. (*Poway Unified School District v. Student* (May 24, 2010) OAH Case No 2009100310.) Administrative agencies generally lack the power to order reconsideration of its decisions (*Olive Proration etc. Com. v. Agri. etc. Com.* (1941) 17 Cal.2d 204, 209; *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407-408), absent specific statutory authority. (*Bonnell v. Medical Bd. Of California* (2003) 31 Cal.4th 1255, 1260.) The APA's section 11521 authorizes a state agency to order reconsideration of its administrative adjudication, upon its or a party's application, as long as an order is issued within the time period for reconsideration applicable to the agency's decisions. The OAH decisions referred to by the APA are not final when issued but become effective after 30 days (absent other orders). (Gov. Code § 11519, subd. (a).)

In contrast, under the IDEA, OAH decisions rendered in special education due process proceedings are final upon issuance, and any party aggrieved by the findings and decision may seek review by bringing a civil action in state or federal district court, within 90 days from the date of the ALJ's decision. (20 U.S.C. § 1415(i); 34 C.F.R. §§ 300.514 and 300.516 (2006); Gov. Code § 56505, subd. (k).) APA provisions regarding reconsideration are therefore inapplicable to special education decisions. No federal or state special education statutes or regulations provide for reconsideration of a decision issued following a due process hearing.

#### DISCUSSION

CDMH seeks reconsideration of the decision herein because of an alleged change in law. However, the special education due process decision was final on the date of its issuance, March 4, 2011. No statute or regulation provides for reconsideration of a due process decision. Instead, an aggrieved party may seek review by filing a civil action in state or federal district court, within 90 days of the date of the decision.

CDMH's citation to *Student vs. Buckeye School District*, OAH no. 2009040469, is misplaced. In *Buckeye*, the parties realized that the ALJ who sat as the hearing officer was unaware of the parties' stipulation to include an additional issue to be addressed in the decision. The parties made the stipulation during the prehearing conference (PHC), before a different ALJ, who ordered consideration of the additional issue. The order after PHC mistakenly failed to include the stipulated order and the ALJ, who presided over the hearing, did not address the issue in the decision. The parties did not assert additional facts or different law. The ALJ was not asked to reconsider a factual finding or conclusion of law. Instead, the parties and the ALJ agreed that a mistake had occurred and a corrected decision was warranted addressing the additional issue. Thus, *Buckeye* is factually and legally distinguishable. Additionally, prior special education decisions are not binding authority (Cal. Code Regs., tit. 5 § 3085).

Absent any authority to the contrary, OAH does not have jurisdiction to entertain reconsideration of a due process decision, which became final when issued. Since OAH lacks jurisdiction, CDMH's other contentions in support of its petition are not addressed.

#### ORDER

CDMH's petition for reconsideration is denied.

Dated: April 20, 2011

/s/

---

CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings