

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL REPRESENTATIVE ON  
BEHALF OF STUDENT,

v.

COUNTY OF SACRAMENTO, CHILD  
PROTECTIVE SERVICES.

OAH CASE NO. 2012061030

ORDER DENYING REQUEST FOR  
RECONSIDERATION

On July 18, 2012, the undersigned administrative law judge issued an order that denied without prejudice the County of Sacramento, Child Protective Services' (CPS) motion to dismiss because CPS failed to submit sufficient evidence that it was not an appropriate public agency that provided special education services, pursuant to title 34, Code of Federal Regulations, parts 300.33 and Education Code, section 56501, subdivision (a). On August 7, 2012, CPS filed a motion for reconsideration, which included a declaration from Luis Villa, Division Manager within the CPS. On August 8, 2012, Student filed an opposition to the motion.

APPLICABLE LAW

The Office of Administrative Hearings (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

CPS' motion and Mr. Villa's declaration do not provide any new facts, circumstances, or law in support of the request reconsideration. The information provided discuss CPS' general obligation to protect the health, welfare and safety of foster children, including Student, without including any specific information as to Student. The July 18, 2012 order specifically stated that OAH would reconsider its denial of CPS' motion to dismiss if CPS

submitted “additional evidence, such as declarations, court orders and IEPs, to establish that its actions, as alleged in the complaint, do not constitute the provision of special education services or instruction, or that it does not have the responsibility to provide such services or instruction.” While CPS indicates that it could not produce evidence without a juvenile court order to establish that its actions did not constitute the provision of special education services or instruction, CPS did not demonstrate why it failed to obtain such an order pursuant to Welfare and Institutions Code, section 827. CPS needs to introduce evidence, like in *Student v. County of Sacramento, Child Protective Services* (March 20, 2012) Cal.Ofc.Admin.Hrngs. Case No. 2012020586, that its decisions to change Student’s placement were not for educational reasons, such as health and safety or family reunification purposes. The parties can further discuss CPS’ motion to dismiss at the August 13, 2012 prehearing conference. Accordingly, CPS’ request for reconsideration is denied without prejudice and CPS shall provide a copy of this order of the Juvenile Court of Sacramento County to be included in Student’s case file.

IT IS SO ORDERED.

Dated: August 10, 2012

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings