

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FALLBROOK UNION HIGH SCHOOL  
DISTRICT.

OAH CASE NO. 2007090067

ORDER DENYING REQUEST FOR  
RECONSIDERATION

On October 19, 2011, the undersigned administrative law judge issued an order following a prehearing conference (PHC) in which she ruled that Student had the burden of proof for both of the issues that were remanded by the United States District Court, Southern District of California in January 2011. On October 21, 2011, Student filed a motion for reconsideration of the burden of proof ruling, and the District filed an opposition to the motion on the same date.

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.)

Once the decision of a hearing officer has been appealed, the hearing officer lacks jurisdiction to act any further in the matter. (*Reid ex rel. Reid v. District of Columbia (Reid)* (C.A.D.C., 2005) 401 F.3d 516, 526-527.)

DISCUSSION

This request for reconsideration is made in a case involving a 2007 OAH decision following a due process hearing. Among other orders, the ALJ who conducted the hearing ordered the parties to participate in an IEP team meeting to determine an appropriate prospective placement for Student that would enable him to earn a high school diploma. The IEP team meeting was held in February 2008, and Student rejected the District's IEP offer and then enrolled Student in a private non-certified school.

Student filed an appeal of the OAH Decision in the United States District Court, Southern District of California in December 2007. Instead of filing a new complaint with OAH asking that the February 2008 IEP offer be found inappropriate, Student asked the federal court to also adjudicate this new issue. In remanding the case to OAH in January 2011, the District Court Judge ordered that OAH determine the appropriateness of the IEP offer the District made to Student at an IEP meeting in February 2008.<sup>1</sup>

In his motion for reconsideration, Student asserts, for the first time, that Education Code section 56346, subdivision (d), affects the burden of proof assignment in this matter. Student's motion is accompanied by a sworn declaration of counsel, Tania Whiteleather, which does not explain why Student's original motion, pursuant to an October 12, 2011 order, failed to provide the statutory authority Student now asserts as controlling.<sup>2</sup> Accordingly, the motion for reconsideration is procedurally deficient.

In addition, the new statutory authority Student has provided, still does not support a finding that the District should have the burden of proving that its IEP offer of February 2008 was appropriate. Because Student had asked the District Court to determine whether this IEP offer was appropriate, OAH lacked jurisdiction over this issue until the Court remanded the issue to OAH in January 2011. Accordingly, Student's motion for reconsideration is denied.

IT IS SO ORDERED.

Dated: October 24, 2011

/s/

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REBECCA FREIE  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> The District Court also ordered that OAH determine the appropriateness of the private non-certified school where Student was then placed by Parents if the District's IEP offer was found to be inappropriate. Student does not contest this ALJ's order that he has the burden of proof as to this issue.

<sup>2</sup> Members of the California State Bar have an ethical duty not to mislead a judge or judicial officer. (Rules Prof. Conduct, rule 5-200(B).) Student's attorney quotes the language of Education Code Section 56346, subdivision (d) that was in effect when the District made the IEP offer at issue in February 2008. However, this subdivision was amended by the Legislature in 2010, and the quoted provision was eliminated. The attorney does not mention this in her motion. Since this case is concerned with events that occurred several years ago, and there may be changes in case and statutory law governing this case, the parties are cautioned to review their legal citations carefully, and note any subsequent changes in the law.