

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

BALDWIN PARK UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2008080953

BALDWIN PARK UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2008080193

ORDER DENYING MOTION TO
EXPEDITE PLACEMENT

On January 22, 2009, the Office of Administrative Hearings (OAH) issued a Decision in this matter allowing the District to place Student at Canyon Valley School (CVS), but not until the beginning of the 2009-2010 school year. Until the beginning of that school year, the Decision required the District to provide to Student certain compensatory education in the form of academic instruction, speech and language therapy, behavioral support, and a recreation coach. The Decision also required the District to arrange for an audiological assessment of Student, and to present an assessment plan to Student's Mother.

On April 2, 2009, the District filed a pleading entitled "Motion to Expedite [Student's] Placement at a Non-Public Agency, Canyon View School, San Dimas, California." The motion alleges that, since the January 22, 2009 Decision, disputes have arisen between the parties over service providers and locations; that Mother has refused to accept the ordered compensatory education; and that Mother has declined to authorize the ordered audiological assessment. The District requests that Student's placement at CVS be expedited, or, in the alternative, that it be relieved of its obligations to deliver the ordered compensatory education and to conduct the audiological assessment.

On April 3, 2009, Student filed an opposition to the motion, and on April 6, 2009, the District filed a declaration in support of its motion.

APPLICABLE LAW

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, subd. (a); Cal. Rules of Court, rule 8.108, subd. (c).) A decision issued by OAH is a final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) OAH orders may be enforced in a court of competent jurisdiction, or through a compliance complaint to the California Department of Education. (*Id.*; see, Cal. Code Regs., tit. 5, § 4650, subd. (a)(7)(B).) OAH does not have jurisdiction to enforce its decisions. (*Wyner v Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029; see also, *Porter v. Board of Trustees of Manhattan Beach Unified School Dist.* (9th Cir. 2002) 307 F.3d 1064, 1069-1070.)

DISCUSSION

Although there is no specific statutory or regulatory deadline for filing a request for reconsideration of an OAH special education decision, the 30-day reconsideration deadlines in Administrative Procedure Act cases and California civil cases supply close analogies. (Gov. Code, § 11521, subd. (a); Cal. Rules of Court, rule 8.108, subd. (c).) Since the District waited almost three months to file its motion, the motion is untimely to the extent that it is a motion to reconsider.

To the extent that the District's motion constitutes an appeal of the January 22, 2009 OAH decision, that appeal must be made to a court of competent jurisdiction under Education Code section 56505, subdivision (k).

If the District seeks relief relating to the new dispute that has arisen between the parties, its remedy is to file another request for due process hearing under Education Code section 56501, subdivision (a). If the District desires to compel Mother to agree to the audiological assessment, it has a remedy under Education Code section 56501, subdivision (a)(3).

OAH has no statutory or regulatory authority to alter the terms of a final decision based on factual developments subsequent to that decision.

ORDER

The District's motion to expedite Student's placement at a non-public agency is denied.

Dated: April 08, 2009

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings