

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GARVEY SCHOOL DISTRICT,

v.

PARENTS on behalf of STUDENT.

OAH CASE NO. 2008110623

ORDER DENYING REQUEST FOR
RECONSIDERATION

Student filed a due process hearing request (complaint) on October 3, 2007 in the matter of *Parents on behalf of Student v. Garvey School District*, OAH Case No. 2007100989 (*Case I*), in which she raised the following issues: (1) Whether District was required to provide Student an occupational therapist that was Sensory Integration Praxis Test certified to conduct District's occupational therapy (OT) assessment? (2) Whether District denied Student a free appropriate public education (FAPE) by failing to have the required occupational therapists at the Individual educational program (IEP) team meetings of June 15, 2007 and June 22, 2007? (3) Whether District is required to reimburse Student for an independent educational evaluation (IEE) conducted on April 18, 2008? A Decision was issued on July 14, 2008 finding for District on all issues. In *Case I*, the ALJ made a factual finding that (1) Student failed to prove that a SIPT certified OT was the only OT qualified to conduct a District assessment; and (2) Michael Ramirez, District's non SIPT certified OT, was qualified to conduct an OT assessment. Student's complaint did not raise an issue concerning the appropriateness of District's May 8, 2008 OT assessment and the ALJ made no specific factual findings or legal determinations concerning the appropriateness of District's May 8, 2008 OT assessment. Student appealed the Decision in *Case I* and the appeal is pending in United States District Court.

Student disputed District's OT assessment following the decision in *Case I*, and requested District fund an (IEE). District denied the request and filed the instant due process hearing request (complaint) on November 19, 2008, in the matter of *Garvey School District v. Parents on behalf of Student*, OAH Case No. 2008110623 (*Case II*). The complaint raised the following issues: (1) Whether District's May 8, 2008, OT assessment was appropriate; and (2) Whether Student is entitled to an IEE at District expense?

On December 9, 2008, District filed a motion for an order to preclude Student's challenge of the adequacy of District's assessment, for an order limiting issues, and for an order of dismissal of its own due process request (*Case II*) on the grounds that the issues for hearing were determined in *Case I*, and are barred under the doctrines of res judicata and/or collateral estoppel. On December 12, 2008 Student filed a response to District's motion. Student argued that the issues in *Case II* were not identical to those decided in *Case I* and the

action could not be barred because the administrative decision in *Case I* is not yet final because the case is on appeal.

On December 15, 2008, OAH issued an Order Following Prehearing Conference denying District's motion to dismiss on grounds of res judicata, and granting District's request to limit issues on grounds of collateral estoppel based upon factual findings made in *Case I* that: (a). District OT Michael Ramirez was qualified to conduct the May 8, 2008, assessment; and (b). Student did not prove that a SIPT certified OT was required to conduct an OT assessment.

On January 20, 2009 Student filed a motion requesting reconsideration of the December 15, 2008 Order Following Prehearing Conference. An Amended Order issued on January 26, 2009 granting reconsideration on the grounds that Collateral estoppel does not apply in this case because the decision in *Case I* is pending on appeal and is not final, and Student is not barred from presenting evidence on (a). District OT Michael Ramirez was qualified to conduct the May 8, 2008, assessment; and (b). Student did not prove that a SIPT certified OT was required to conduct an OT assessment.

On January 28, 2009, at hearing on District's complaint, District filed a Motion for Reconsideration of the January 26, 2009, amended order granting reconsideration.

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 Ca..App.4th 1192, 1199-1200.)

DISCUSSION AND ORDER

District's motion does not set forth any new or different facts, circumstances, or law justifying reconsideration of the order issued on January 26, 2009. The District's motion to for reconsideration is denied.

Dated: February 25, 2009

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings