

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

ORANGE COUNTY DEPARTMENT OF
EDUCATION,

v.

STUDENT,

OAH CASE NO. 2009010078

STUDENT,

v.

ORANGE COUNTY DEPARTMENT OF
EDUCATION; CALIFORNIA
DEPARTMENT OF EDUCATION &
NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009010529

ORDER DENYING NEWPORT-MESA
UNIFIED SCHOOL DISTRICT'S
REQUEST FOR RECONSIDERATION

On June 2, 2009, Administrative Law Judge Richard T. Breen issued a Decision in the above matters. The Decision found that because the “responsible adult” appointed by the Orange County Juvenile Court to make educational decisions for Student lived within the Newport-Mesa Unified School District (District), District was the educational agency responsible to provide a free appropriate public education to Student under the Individuals with Disabilities Education Act. The Decision was based on an interpretation of California law as it existed during the relevant time periods.

On June 26, 2009, District filed a Motion for Reconsideration (Motion). The Motion contends that reconsideration is warranted because over two weeks after the Decision, a United State District Court rendered a decision on a motion for summary judgment in another case based on a different interpretation of California law on the residency issue. Fore the reasons set forth below, reconsideration is denied.

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 [general rule that administrative agency decisions may be reconsidered]; Code Civ. Proc., § 1008 [general rule permitting civil courts to reconsider orders based upon a showing

of new or different facts, circumstances, or law].) 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.)

Here, District seeks reconsideration of the June 2, 2009 Decision because on June 18, 2009, after the Decision was issued, the United States District Court for the Central District of California issued a ruling in another case (*Orange County Department of Education, et al., v. A.S.*, United States District Court, Central District of California, SACV08-0077-JVS (A.S.)) that reached a different result. Reconsideration is not warranted because the District Court's decision is not new or binding authority.

First, at the time the ALJ rendered the Decision in the instant matter, a published order on a motion to dismiss for failure to state a claim already existed in the A.S. matter. The published order, *Orange County Department of Education v. A.S.* (C.D. Cal. 2008) 567 F.Supp.2d 1165, interpreted California law on the subject of residency for purposes of determining the educational agency that was required to provide special education to students who were wards of the juvenile court and whose parents no longer had rights to make educational decisions. The ALJ rejected the reasoning of the published order in A.S. (Decision, Legal Conclusion 20, p. 10.) The new ruling submitted by District as justification for reconsideration relies in large part on adopting the same reasoning from the published order that was already rejected by the ALJ. (Motion for Reconsideration, Ex. A, p. 4.)

Further, the new ruling in A.S. also relies on a rejection of the California Department of Education's argument that amendments to Education Code section 56028 that became effective on January 1, 2009 evidenced a legislative intent that at all times the residency of the "responsible adult" determined residency for purposes of determining the responsible local agency. Like the United States District Court, the ALJ did not find the California Department of Education's argument on this point particularly persuasive. The ALJ's decision in the instant matter relied on interpretation of the entire statutory scheme prior to the January 1, 2009 effective date of the amendments to Education Code section 56028. At most, the ALJ determined that the changes to Education Code section 56028 that became effective January 1, 2009 continued to make a logical distinction between "surrogate parent" and "responsible adult" that already existed in California law. (Decision, Legal Conclusion 24, p. 12.) Thus, the June 18, 2009 ruling in A.S. is not new law that the ALJ failed to consider.

Finally, without citation to any authority, District contends that the June 18, 2009 United States District Court ruling in A.S. is "indisputably controlling" on the interpretation of California law and the ALJ is "bound" to follow it. However, it is well-established that "state courts are the ultimate expositors of state law." (*Mullany v. Wilbur* (1975) 421 U.S. 684, 691 [95 S.Ct. 1881].) Thus, although they may be persuasive, United States District Court decisions purporting to interpret state law are not binding on state courts. (*Johnson v. American Standard* (2008) 43 Cal.4th 56, 69.) There is no reason the above authorities would not apply with equal force to a state administrative decision that relies solely on an interpretation of state law. Here, as discussed above, and in the Decision, the ALJ concluded that the United States District Court's interpretation of the Education Code in A.S. was not

correct, as it failed to analyze the statutory scheme as a whole. Thus, the ALJ is not “bound” to follow a United States District Court interpretation of state law that the ALJ respectfully disagrees with, particularly when the ALJ considered the same points and issued a final decision prior to the June 18, 2009 United States District Court ruling in *A.S.*

Newport-Mesa Unified School District’s request for reconsideration is DENIED.

IT IS SO ORDERED.

Dated: June 30, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings