

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

PANAMA-BUENA VISTA UNION  
SCHOOL DISTRICT; ET AL.

OAH CASE NO. 2009050651

ORDER GRANTING  
RECONSIDERATION OF DISMISSAL  
OF KERN COUNTY CONSORTIUM  
SELPA

Student's due process hearing request (complaint) was filed on May 18, 2009. The complaint named both the Panama-Buena Vista Union School District (District), the Claude W. Richardson Center and the Kern County Consortium SELPA as respondents. District filed an NOI and SELPA filed a motion to dismiss. On June 1, 2009, the complaint was found to be insufficient. The OAH order on the NOI noted in a footnote that SELPA's motion to dismiss was moot because the NOI motion resulted in Student being given a chance to amend the complaint. Student filed an amended complaint on June 15, 2009. The amended complaint was found sufficient on July 1, 2009. Also on July 1, 2009 OAH issued an order granting SELPA's motion to dismiss without consideration of the footnote in the order finding the first complaint insufficient.

On July 8, 2009, Student filed a letter with OAH stating that Student believed, in reliance on the footnote in the first NOI order, that Student would have an opportunity to oppose SELPA's motion to dismiss prior to ruling. Student's letter was served on SELPA and the District on July 9, 2009. Student's letter has been construed as a motion for reconsideration. No opposition was received.

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.)

Here, the July 1, 2009 OAH order granting SELPA's motion to dismiss was improvidently granted prior to Student having an opportunity to file an opposition.

ORDER

1. The July 1, 2009 OAH Order granting the SELPA's motion to dismiss is withdrawn.

2. SELPA may file a new motion to dismiss regarding Student's first amended complaint within seven days of the date of this order.

3. If SELPA files a new motion to dismiss, Student may file an opposition within three days of the date the motion to dismiss was served.

4. If Student files an opposition, no reply brief shall be filed.

It is so ordered.

Dated: July 16, 2009

/s/

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RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings