

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2010020941

v.

RAVENSWOOD CITY SCHOOL DISTRICT,

RAVENSWOOD CITY SCHOOL DISTRICT,

OAH CASE NO. 2010040340

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING REQUESTS FOR
RECONSIDERATION

On August 20, 2010, the undersigned administrative law judge (ALJ) issued a Decision following a due process hearing. The District was ordered to pay tuition and costs for Student to attend a private school named Stellar Academy as compensatory education for the District's failure to provide Student with a free appropriate education for the 2007-2008, 2008-2009, and 2009-2010 school years.

On August 25, 2010, the District filed a request for clarification of the order for payment of tuition and costs with the Office of Administrative Hearings (OAH). OAH determined that this was actually a request for reconsideration. The Student then filed a statement opposing that request, on the same date, although he gave no grounds for his opposition. On September 2, 2010, Student filed an amended opposition which gave information about events subsequent to the issuance of the Decision. This statement of opposition was found to be Student's own request for reconsideration.

On September 3, 2010, OAH received a letter from the District declining to respond to Student's request, and further informing OAH that the District had filed an appeal of the Decision in federal court. OAH was subsequently served with the federal complaint that was filed on September 2, 2010.

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; 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 AND ORDER

The District asked that the ALJ clarify her order in light of Education Code section 56505.2, which states that “[a] hearing officer may not render a decision that results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, . . . if the school . . . has not been certified [by the California Department of Education (CDE)] pursuant to Education Code section 56366.1.” Stellar Academy is not certified by CDE.

Education Code section 56505.2 was enacted by the Legislature in 1993, and signed by the Governor and became effective on October 8, 1993.¹ Shortly after, on November 9, 1993, the United States Supreme Court issued *Florence County School District Four v. Carter* (1993) 510 U.S. 7 [126 L.Ed.2d 284], which, under certain circumstances, allows reimbursement to a parent who has unilaterally placed a child in a private school, even if that school is not state-approved. This raises the question of whether section 56505.2 is legally binding. Further, the order that the District pay tuition and costs for Student at Stellar Academy was an award of compensatory education, not a placement. “[C]ompensatory education is not a contractual remedy, but an equitable remedy” (*Student W v. Puyallup School District, No. 3* (9th Cir., 1994) 31 F.3d 1489, 1497.) As an equitable remedy, the ALJ has broad discretion to fashion a remedy “to ensure that the student is appropriately educated within the meaning of the IDEA.” (*Ibid.*)

Nevertheless, because the District has filed an appeal of the Decision, the requests for reconsideration must be denied for lack of jurisdiction.

IT IS SO ORDERED.

Dated: September 29, 2010

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

¹ Although section 56505.2 has been amended several times since then, the language in question was part of the original enactment, and has not been changed.