

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

HEARTSPRING.

OAH CASE NO. 2010100936

ORDER GRANTING MOTION FOR
RECONSIDERATION AND
REAFFIRMING ORDER GRANTING
MOTION TO DISMISS COMPLAINT

On October 20, 2010, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming Heartspring, an out-of-state nonpublic school (NPS).

On November 1, 2010, Heartspring, Inc. filed a Motion to Dismiss, alleging that the Office of Administrative Hearings (OAH) does not have jurisdiction in this case.¹

On the afternoon of November 4, 2010, Student filed an opposition to the motion to dismiss. However, the undersigned Administrative Law Judge (ALJ) did not receive the response from Student prior to issuing an Order Granting Motion to Dismiss Complaint (Order) on November 4, 2010. On November 4, 2010, Student filed a request for reconsideration of the Order. Heartspring has not filed any response with OAH.

APPLICABLE LAW

The Order sets forth the applicable law. In general, special education due process hearing procedures extend to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.) The primary responsibility for providing a free

¹ Heartspring served the motion on Student’s attorney. In addition, the NPS served the motion on the attorneys of record for both the San Miguel Joint Union School District (District), in OAH Case No. 2010090006, and the San Luis Obispo County Special Education Local Planning Agency (SLO SELPA), in OAH Case No. 2010100993. By order dated November 8, 2010, OAH granted Student’s motion to consolidate his other two cases involving the District and the SLO SELPA.

appropriate public education (FAPE) to a pupil with a disability rests with a local education agency (LEA). (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 48200.)

OAH will usually 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.)

DISCUSSION

OAH generally provides the parties with three business days within which to respond to any motion, following which an ALJ will rule on the motion. In this case Student had until the close of business on November 4, 2010, within which to file a response. Student's motion for reconsideration is granted because the ALJ should have considered Student's opposition argument prior to ruling on the motion. The Order was issued prematurely.

On reconsideration of the Order, however, Student has not presented any new or different evidence to support a finding that the Order should be vacated. Student contends in his complaint that the San Miguel Joint Union School District placed Student at Heartspring, an NPS in Kansas, and began funding that placement in August 2008, pursuant to an individualized education program (IEP).² Student's opposition filed on November 4, 2010, is consistent with his complaint in asserting, without authority, that OAH has jurisdiction over Heartspring to hear his dispute.

OAH does not generally dismiss claims that have otherwise been properly pleaded. However, OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, including dismissing improper parties. (*Student v. LACOE, et al.* (2010), Cal.Offc.Admin.Hrngs, Case No. 2009100740 [order granting motion to dismiss school district].) Student's opposition does not present any new evidence that Heartspring is a public education agency or LEA responsible under California law for providing him with a FAPE. Student requests leave to amend the complaint but does not provide any explanation or proffer of proof.

The parties agree that Heartspring is an NPS and that it provided educational and residential services to Student. Student argues that that Heartspring had contractual responsibilities with the District and the State of California and requests an evidentiary hearing. Student had the opportunity to, and did not, attach any evidence in opposition to Heartspring's motion, such as declarations under penalty of perjury or a copy of any contract between the NPS and the District. However, it is evident that OAH does not have jurisdiction to resolve contractual disputes in these circumstances. As an out-of-state

² See Footnote No. 1.

nonpublic entity, Heartspring is not a public agency responsible for delivery of a FAPE to Student.

ORDER

The Order of November 4, 2010, granting Heartspring's Motion to Dismiss this case is reaffirmed.

Dated: November 15, 2010

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings