

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PLACENTIA-YORBA LINDA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011051173

ORDER DENYING REQUEST FOR
RECONSIDERATION

On April 24, 2012, the undersigned administrative law judge issued an order following the prehearing conference (PHC) which, in part, clarifies the issues to be heard at hearing. On April 25, 2012, Danielle Augustin, Attorney at Law, filed a motion for reconsideration on behalf of Parent on behalf of Student (Student). Ms. Augustin objects to the rewording of Student's Issue Two on the grounds that it incorporates an additional burden of proof for Student. The Office of Administrative Hearings (OAH) has not received a response from Placentia-Yorba Linda Unified School District (District).¹

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

DISCUSSION AND ORDER

Clarifying the issues for hearing is within the province of the ALJ's discretion to manage the hearing. It is the responsibility of the ALJ to streamline the due process hearing

¹ The hearing is set to commence Monday, April 30, 2012. Given the short time frame, this ALJ has issued a written order prior to the expiration of three business days. However, both parties may address the issue further at the beginning of the hearing.

by identifying and focusing the issues. One of the purposes of a PHC is to determine which issues will be litigated at the hearing based on those issues alleged in the complaint.²

Here, Student's motion requests that the PHC Order be revised to list Issue Two as originally stated by Student. Student's Issue Two as originally pled is vague and overbroad and does not provide adequate notice of the issue to the District. To prove that District denied Student a free appropriate public education (FAPE) "by failing to provide an appropriate placement and program," Student must identify the types of services and/or placement he required to receive a meaningful educational benefit, had the District found him eligible for special education and related services. When questioned at the PHC, Ms. Augustin identified both the relevant eligibility categories and types of services that District should have provided and these are included in PHC order as part of Issue Two.

The legal issues for determination at a due process hearing are driven by the complaint. The rewording of Issue Two does not change the substance of the original issue as listed in Student's complaint, nor does it impose an additional burden of proof. To prove that District denied Student an "appropriate placement and program," Student must prove what he would have required to receive a FAPE. That burden has not changed. Revising the PHC Order is therefore unnecessary.

Accordingly, Student's request for reconsideration is Denied.

IT IS SO ORDERED.

Dated: April 26, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

² See Amended Scheduling Order dated November 7, 2011, at p. 2, which states, "A prehearing conference is a telephonic conference held between the Administrative Law Judge and the parties to discuss and clarify the due process hearing issues, witnesses, and other prehearing matters."