

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011060716

ORDER DENYING REQUEST FOR  
RECONSIDERATION

On June 13, 2011, Student filed a Due Process Hearing Request (complaint) naming Long Beach Unified School District (District) as the respondent. On June 23, 2011, District timely filed a Notice of Insufficiency (NOI). On June 24, 2011, Administrative Law Judge Richard T. Breen (ALJ Breen) issued an Order determining the complaint insufficient as to Problem 1, but sufficient as to Problems 2 through 8. On June 28, 2011, Student filed an Opposition to District's NOI. In addition to addressing District's claims of insufficiency, Student stated that OAH should have waited the customary time for filing an opposition with OAH. Student's Opposition shall be considered a Motion for Reconsideration as it was filed after the issuance of ALJ Breen's Order.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A). When a party timely files a challenge to the sufficiency of the complaint, the ALJ must make a determination within five days of receipt of the challenge. (20 U.S.C. § 1415 (c)(2)(D).) ALJs must make the determination from the face of the notice whether the notification meets the pleading requirements of subsection (b)(7)(A). (*Ibid.*) Once an ALJ determines the sufficiency of the complaint, they are required to immediately notify the parties in writing of such determination.

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

Reconsideration of ALJ Breen's Order is inconsistent with the IDEA. One day after District filed and served its NOI, ALJ Breen issued his Order. OAH customarily allows the opposing party three business days to file oppositions to motions. However, this rule does not apply to NOIs because the IDEA requires OAH to respond to NOIs within five days, and to issue Orders immediately upon completion of the review of the complaint. Further, ALJs are required to base their determination of the sufficiency of complaints solely from the allegations set forth in the complaint, and not on the arguments of the parties. As such, reconsideration is inappropriate because the NOI Order was properly issued. Student's Motion for Reconsideration is denied.

IT IS SO ORDERED.

Dated: June 29, 2011

/s/

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EILEEN M. COHN  
Administrative Law Judge  
Office of Administrative Hearings