

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SAN LEANDRO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010010340

ORDER DENYING REQUEST FOR
RECONSIDERATION

On January 25, 2010, the Office of Administrative Hearings (OAH) issued an order denying the San Leandro Unified School District's (District) motion for dismissal of Student's case. On January 25, 2010, the District filed a motion for reconsideration of that ruling. Student has filed an opposition to the District's motion for reconsideration. The District bases its motion for reconsideration on the fact that its reply papers for the initial motion were not filed until after the ALJ had finished ruling on the motion.¹

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.)

DISCUSSION AND ORDER

The District alleges no new facts, circumstances or law in support of the request for reconsideration. The District's reply papers were just that -- a reply to the opposition that Student had filed to the District's initial motion. They were simply a continuation of the District's arguments from its initial moving papers.

The District apparently misunderstands the reason for the initial ruling on the motion to dismiss. Both federal and state education law contemplate a *hearing* on a due process

¹ OAH generally waits three days after the filing of a motion to dismiss before ruling on the motion to give the other party a chance to file an opposition. While a moving party may choose to file reply papers, there is no requirement for a reply, and no additional waiting time is provided for the filing of reply papers.

request. There is no statutory procedure for a motion for summary judgment in a special education due process case. Although OAH will entertain motions to dismiss in special education cases, such motions are granted only in unusual circumstances, such as when OAH lacks jurisdiction to decide a case.

The District's initial motion was entitled a "motion to dismiss," but it was really a motion for summary judgment in which the District wished to have OAH make a ruling on the parties' disputed issues of fact and law. That is not an appropriate motion for a special education case. The District will have a full opportunity to raise any disputed issues of fact and law during the administrative hearing.

The arguments in the District's reply papers to the initial motion and the arguments in its motion for reconsideration do not raise any new issues or issues that may be appropriately decided on a motion to dismiss. The motion for reconsideration is denied.

It is so ordered.

Dated: January 28, 2010

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings