

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON  
BEHALF OF STUDENT,

V.

LOS ANGELES COUNTY OFFICE OF  
EDUCATION AND CALIFORNIA  
DEPARTMENT OF MENTAL HEALTH.

OAH CASE NO. 2010110301

ORDER DENYING MOTION FOR  
RECONSIDERATION BY  
CALIFORNIA DEPARTMENT OF  
MENTAL HEALTH

FACTUAL BACKGROUND

The undersigned administrative law judge (ALJ) convened a due process hearing in this matter on January 11 and 13, 2011. The ALJ issued her decision on February 8, 2011, finding, inter alia, that the California Department of Mental Health (CDMH), along with the Los Angeles County Office of Education (LACOE) was responsible for providing mental health services to Student during the time period covered by the case. The ALJ concluded however, that neither respondent had failed to provide legally adequate mental health services to Student, commonly referred to as AB 3632 services,<sup>1</sup> and therefore denied Student the relief he requested. On March 9, 2011, CDMH filed a motion for reconsideration of the decision. Student filed an opposition to the motion on March 14, 2011. CDMH thereafter filed a reply to the opposition on March 17, 2011.

CDMH contends that the recent decision of the California Court of Appeal, published on February 25, 2011, in *California School Boards Ass'n v. Brown* (2011) 192 Cal.App.4th 1507 (petn. for review pending, petn. filed April 16, 2011 (S191952) (herein, *Calif. Sch. Bd. Ass'n*.) provides a new legal basis for its assertion that it is not responsible for providing mental health care to Student and others similarly situated. CDMH argues that the decision supports its assertion that former Governor Schwarzenegger had the authority to suspend the AB 3632 mandate that places responsibility for the provision of mental health services to children with special needs on local mental health agencies. CDMH claims that this recent case establishes that it is free of responsibility for failing to timely provide related mental

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<sup>1</sup> California provides for interagency responsibility regarding the provision of special education related mental health services. (Gov. Code §§ 7570–7588 (Ch. 26.5).) The statutory scheme is known as AB 3632 after the Assembly Bill that created the law.

health services. Therefore, CDMH contends that it should have been dismissed as a party to this action.

Among other arguments he makes in opposition to CDMH's motion, Student contends that OAH lacks jurisdiction to reconsider a special education decision after it is issued, noting that the prior OAH order purportedly reconsidering a decision was actually a stipulated request to correct a mistake.

## APPLICABLE LAW

The Office of Administrative Hearings (OAH) will generally reconsider rulings on motions 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.) As discussed below, decisions are treated differently than rulings on motions. The cases cited by CDMH are therefore inapposite to the instant situation where it seeks reconsideration of a final OAH decision rather than reconsideration of an order.

The Administrative Procedure Act (APA) (Gov. Code §§ 11340 *et seq.*) is only applicable in part to special education hearings. (*Poway Unified School District v. Student* (May 24, 2010) OAH Case No 2009100310.) Prior case law instructs that administrative agencies generally lack the power to order reconsideration of their decisions (*Olive Proration etc. Com. v. Agri. etc. Com.* (1941) 17 Cal.2d 204, 209; *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407-408), absent specific statutory authority to do so. (*Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1260.) Section 11521 of the APA authorizes a state agency to order reconsideration of its administrative adjudication, upon its or a party's application, as long as an order is issued within the time period for reconsideration applicable to the agency's decisions. The OAH decisions referred to by the APA are not final when issued but become effective after 30 days (absent other orders). (Gov. Code § 11519, subd. (a).)

In contrast, under the Individuals with Disabilities Education Act, OAH decisions rendered in special education due process proceedings are final upon issuance. Any party wishing to contest the findings and decision may seek review by bringing a civil action in state or federal district court, within 90 days from the date of the ALJ's decision. (20 U.S.C. § 1415(i); 34 C.F.R. §§ 300.514 and 300.516 (2006); Gov. Code § 56505, subd. (k).) APA provisions regarding reconsideration are therefore inapplicable to special education decisions. No federal or state special education statutes or regulations provide for reconsideration of a decision issued following a due process hearing.

## DISCUSSION

CDMH seeks reconsideration of the decision issued on February 8, 2011, by the undersigned ALJ because of an alleged change in law. However, the special education due process decision was final on February 4, 2011, the date OAH issued it. Since no statute or regulation provides for reconsideration of a due process decision, CDMH's recourse if it disagreed with the ALJ's decision was to seek review by filing a civil action in state or federal district court, within 90 days of the date of the decision.

The case of *Student vs. Buckeye School District* (2009) Cal.Offc.Admin.Hrngs Case No. 2009040469, cited by CDMH, is inapposite. In *Buckeye*, the parties realized that the ALJ who sat as the hearing officer was unaware of the parties' stipulation to include an additional issue to be addressed in the decision. The parties made the stipulation during the prehearing conference (PHC), before a different ALJ, who ordered consideration of the additional issue. The order after PHC mistakenly failed to include the stipulated order and the ALJ, who presided over the hearing, did not address the issue in the decision. The parties did not assert additional facts or different law. The ALJ was not asked to reconsider a factual finding or conclusion of law. Instead, the parties and the ALJ agreed that a mistake had occurred and a corrected decision was warranted addressing the additional issue. Thus, *Buckeye* is factually and legally distinguishable. Additionally, prior special education decisions are not binding authority (Cal. Code Regs., tit. 5 § 3085).

Absent any authority to the contrary, OAH does not have jurisdiction to entertain reconsideration of a due process decision, which became final when issued. Since OAH lacks jurisdiction, it is unnecessary to address either CDMH's other contentions in support of its motion or the other grounds raised by Student in his opposition.

## ORDER

CDMH's motion for reconsideration is denied.

Dated: May 6, 2011

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings