

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

BAKERSFIELD CITY SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010110795

ORDER DENYING REQUEST FOR  
RECONSIDERATION AND  
ORDERING DISTRICT TO SERVE  
STUDENT'S ADVOCATE WITH  
COURTESY COPIES OF FILINGS VIA  
FAX

On November 30, 2010, OAH issued two orders, granting District's Motion to Amend its Due Process Hearing Request (amended complaint), and denying Student's Motion to Dismiss District's original complaint. On December 1, 2010, Student filed a request for reconsideration.

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.)

The party requesting a special education due process hearing must provide the opposing party with notice of the complaint. (20 U.S.C. § 1415(b)(7)(A).) Education Code section 56502, subdivision (c), requires that the party filing the request provide the opposing copy with notice of the complaint at the same time that it is filed with OAH. The manner of service of documents is not prescribed, however the California Administrative Procedure Act provides that in matters pending before OAH, service may be effected by personal delivery, first-class mail, registered mail, certified mail, mail delivery service, or by facsimile transmission, in the discretion of the sender. (Gov. Code, § 11440.20; Cal. Code Regs., tit. 1, § 1008.)

## DISCUSSION AND ORDER

Student's Motion to Dismiss contended that Parents and their advocate had not been properly served with District's original complaint. OAH denied the Motion to Dismiss as moot, because District had subsequently filed a Motion to Amend the Complaint, which Student had not opposed. Student now alleges that he was also not served with the Motion to Amend, and had no opportunity to oppose it prior to receiving OAH's order granting it. He contends that he has received OAH's orders via fax, but is not in receipt of District's filings. He therefore seeks reconsideration of OAH's two prior orders.

The proof of service on District's Motion to Amend shows that, while the document was filed with OAH by fax, it was served on Parents and their advocate by certified mail. Although the manner of service is normally at the sender's discretion pursuant to Government Code section 11440.20, filing documents with OAH by fax while serving them by certified mail does not comply with Education Code section 56502, subdivision (c), which specifically requires that the party filing a complaint provide the opposing copy with notice of the complaint "at the same time" that it is filed with OAH.

Nevertheless, Student has shown no prejudice from OAH's order allowing District to amend its complaint, or denying Student's Motion to Dismiss the District's original superseded complaint. Therefore Student's motion for reconsideration is denied.

Meanwhile, for the duration of this due process proceeding, District is ordered to serve courtesy copies of its filings on Parent's advocate by fax. Otherwise, the advocate may continually receive OAH orders by fax relating to District filings he has not yet seen.

IT IS SO ORDERED.

Dated: December 2, 2010

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings