

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COACHELLA VALLEY UNIFIED
SCHOOL DISTRICT AND RIVERSIDE
COUNTY SPECIAL EDUCATION
LOCAL PLAN AREA.

OAH CASE NO. 2011020716

ORDER DENYING REQUEST FOR
RECONSIDERATION

On February 24, 2011, the undersigned administrative law judge issued an order denying Riverside County Special Education Local Plan Area's (RCSELPA) Motion to be Dismissed as a party. On April 26, 2011, RCSELPA filed a motion for reconsideration, supported by declarations attesting to its position that it was not involved in any decisions regarding Student and did not provide special education or related services to Student. The Office of Administrative Hearings (OAH) has received no opposition to the motion, however because special education law does not provide for a summary judgment procedure, the motion must be denied.

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.)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.) Thus, a SELPA may be a proper party when it has provided special education or related services to a student, or has been involved in any decisions regarding a student.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure.

DISCUSSION AND ORDER

On February 18, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming Coachella Valley Unified School District (District) and RCSELPA as respondents. On February 22, 2011, RCSELPA filed a Motion to be Dismissed as a Party, arguing that it “has had no contact with the family and has no involvement in her case.” On February 23, 2011, Student filed an opposition, arguing that RCSELPA’s name had been on each of Student’s Individualized Education Plan (IEP) documents, assessment plans, progress reports and amendments. Because the motion was not limited to matters facially outside of OAH jurisdiction, but instead sought a ruling on the merits of whether the facts would establish RCSELPA’s involvement with Student, the motion was denied.

On April 26, 2011, RCSELPA filed its motion for reconsideration, with supporting declarations, further attesting to its position that it was not involved in any decisions regarding Student and did not provide special education or related services to Student. The motion thus presents new facts, but still seeks a ruling on the merits of whether the facts will establish RCSELPA’s involvement with Student. Special education law does not provide for a summary judgment procedure. Accordingly the motion must again be denied.

ORDER

Riverside County Special Education Local Plan Area’s Motion for Reconsideration is denied. The matter shall proceed as scheduled.

Dated: May 04, 2011

/s/

JUNE R LEHRMAN

Administrative Law Judge

Office of Administrative Hearings

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).