

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

vs.

ALPINE UNION SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N2006100191

**ORDER DENYING MOTION FOR  
RECONSIDERATION RE: ADDING A  
PARTY**

On October 3, 2006, the Office of Administrative Hearings (OAH), Special Education Division, received a due process hearing complaint (Complaint) from attorney Ava Weitzen, on behalf of Petitioner Student (Petitioner). The Complaint named Alpine Union School District (Alpine) as the respondent, and identified claims for the 2003-2004, 2004-2005, and 2005-2006 school years, including the extended school years. The Complaint indicated that Student resided in Alpine and initially attended public school in Alpine, where he was identified as eligible for special education and received special education services. However, subsequently his parents enrolled him in Balboa City School (Balboa), a nonpublic school (NPS), to address his unique educational needs.

On October 6, 2006, OAH received from Petitioner a motion to join San Diego Unified School District (SDUSD) as a party. The motion states that that Balboa is located within SDUSD, that Petitioner attended Balboa for the 2003-2004, 2004-2005, and 2005-2006 school years, including the extended school years, and that Petitioner seeks reimbursement from SDUSD for his tuition at Balboa and fees for related services. The motion alleges that SDUSD “was obligated under IDEA 2004 to ensure a Free Appropriate Public Education (FAPE) by providing special education and/or related services to Petitioner (20 U.S.C. section 1412(a)(10)(A).)” The motion contends that, pursuant to that section, SDUSD failed to “conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.” The motion also alleges that SDUSD violated its obligations under California Education Code section 56172, subdivision (b).

On October 19, 2006, OAH received from SDUSD an opposition to Petitioner's motion to add SDUSD as a party.<sup>1</sup> SDUSD argues that it had no obligation to serve Petitioner because Petitioner was a resident of Alpine during the time period in question. SDUSD also points out that the new regulations to the Individuals with Disabilities in Education Improvement Act of 2004 (IDEIA) did not become effective until after the time period at issue in this case, and thus Petitioner's attempt to retroactively apply the new laws is incorrect.

On October 23, 2006, OAH Administrative Law Judge Suzanne Brown issued an Order Denying Motion To Add A Party. On October 31, 2006, OAH received Petitioner's motion for reconsideration of the October 23, 2006 Order Denying Motion To Add A Party.

### APPLICABLE LAW

The Office of Administrative Hearings (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. 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 reauthorized IDEIA became effective July 1, 2005, and significantly amended Title 20 U.S.C. section 1415(b) and (c). Under the amended sections, a amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the request occurs more than 5 days prior to the due process hearing (§1415(c)(2)(E).) In either case, the filing of an amended complaint restarts the applicable timelines for due process hearing pursuant to §1415(f)(1)(B). Additionally, new federal regulations to the IDEIA were issued on August 14, 2006, and became effective on October 13, 2006.

Generally, the public education agency with responsibility for a child's education is that which serves the area in which the parent resides. (Ed. Code § 48200.) Where a school district is willing to serve a disabled child but the parents voluntarily choose to place the child in a private school, the child has no individual entitlement to any services from the public educational agency. (34 C.F.R. § 300.454(a) (1999); 34 C.F.R. §300.137(a) (2006).) Consequently, there is no right to the due process procedures for children who have been voluntarily enrolled in private schools by their parents, unless the claim involves the child-find obligations of location, identification, or evaluation. (34 C.F.R. § 300.457 (1999); 34 C.F.R. § 300.140(a) (2006).)

---

<sup>1</sup> Alpine did not submit any response to the motion to add SDUSD as a party.

For these parentally placed private school children, a school district's limited obligations include identification, location, and evaluation "to determine which children with disabilities are currently receiving needed special education and related services." (20 U.S.C § 1412(a)(3)(A) (IDEIA 2004); see 20 U.S.C. § 1412(a)(10)(A)(i) (IDEIA 2004); 34 C.F.R. § 300.140(a) (2006); 34 C.F.R. § 300.453 (1999); Ed. Code § 56172.) Although federal law provides that local educational agencies shall develop a service plan for each disabled private school child identified as eligible for special education, due process procedures do not apply to complaints that a local educational agency failed to develop a service plan or provide services indicated on the child's service plan. (34 C.F.R. § 300.140(a) (2006).)

## DISCUSSION

Petitioner filed his motion for reconsideration in a timely manner. While he cites additional law, he does not explain why he failed to previously provide those legal citations. In any event, the reason for this failure does not matter, because the additional law Petitioner cites is irrelevant to the reasons why SDUSD cannot be added as a party.

The October 23, 2006 Order determined that Petitioner's motion to add SDUSD as a party relied solely upon legal provisions regarding parentally placed private school children who have been voluntarily enrolled in private schools by their parents and have no individual right to special education. Additionally, the order noted the following:

If Petitioner is alleging that she is a parentally placed private school child, then [he] has no right to pursue a due process hearing, other than for issues concerning child find obligations. In that event, it is unclear on what basis Petitioner would allege a violation of SDUSD's child find obligations, given that Alpine had already identified Petitioner as a child eligible for special education.

In his initial complaint, Petitioner alleges that previously Alpine identified him for special education, and that he received special education services at Alpine for three and a half years, until his parents enrolled him at Balboa, the NPS located within the boundaries of SDUSD. Thus, it is unclear how Petitioner can raise a "child find" claim against SDUSD, given that Petitioner had already been identified, located, and evaluated for special education.

Moreover, Petitioner's motion for reconsideration fails to address how Petitioner can allege both denial of FAPE claims against Alpine and child find claims against SDUSD. The provisions that Petitioner raises as the basis for his child find claim against SDUSD solely concern parentally placed private school children. If Petitioner is a parentally placed private school child, then he has no right to receive a FAPE and no right to a due process hearing for denial of FAPE claims. (See 34 C.F.R. § 300.457 (1999); 34 C.F.R. § 300.140(a) (2006).)

Finally, Petitioner's motion for reconsideration alleges that SDUSD failed to fulfill its obligations to him as a private school child; for example, Petitioner claims that "SDUSD failed to provide a service plan that would describe the specific special education or related services that would be provided to Petitioner." However, due process procedures do not apply to this type of claim. (34 C.F.R. § 300.140(a) (2006); 34 C.F.R. § 300.457 (1999).)

Hence, even if Petitioner had adequately explained why he failed to previously provide the additional law he now cites, there is no basis for changing the ruling that SDUSD cannot be added a party. The October 23, 2006 Order denying Petitioner's motion to add SDUSD as a party stands as written.

#### ORDER

The motion for reconsideration is denied; Petitioner may not add SDUSD as a party.

Dated: November 6, 2006

---

SUZANNE B. BROWN  
Administrative Law Judge  
Special Education Division  
Office of Administrative Hearings