BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013040050
v.	ORDER GRANTING DOWNEY UNIFIED SCHOOL DISTRICT'S MOTION FOR RECONSIDERATION
DOWNEY UNIFIED SCHOOL DISTRICT, ET AL.	

On April 11, 2013, Downey Unified School District (Downey) filed a motion to be dismissed from this case. At the time, Downey was not represented by counsel. Downey did not serve the motion on the other parties to the case and the only declaration filed in support of the motion was not sufficient. On April 17, 2013, OAH issued an order denying that motion.

On April 25, 2013, Downey filed a motion seeking reconsideration of the OAH order denying dismissal. The District explained that it was not represented by counsel at the time of its initial motion and did not understand the requirement to serve all parties with the moving papers. The District points out that the OAH order did not reach the merits in denying the motion.

The District is correct. Nothing in the April 17, 2013 order was intended to address the substantive merits of the District's motion to dismiss, nor was the order intended to prevent the District from filing a new motion with proper service on the parties.

The District's motion for reconsideration is hereby granted.

However, because of nature of a reconsideration motion, Student's parent has still not had an opportunity to respond to the underlying motion to dismiss. Therefore, it would not be appropriate to rule on the merits of the motion to dismiss as part of the reconsideration motion. In addition, the District has raised new arguments in its motion for reconsideration that were not raised in the initial motion to dismiss.

The appropriate course of action is to permit the District to file and properly serve a new motion to dismiss, giving Student's parent an opportunity to oppose or otherwise respond to that motion.[1]

ORDER

1. The District's motion for reconsideration is granted.

2. The District shall be permitted to file a new motion to dismiss, with proper service on all parties.

Dated: April 26, 2013

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

[1] However, the District should be cautioned that its main argument in support of the motion to dismiss – that it was not involved in any educational decisions regarding Student – appears at first glance to be a motion for summary judgment. Summary judgment motions are not permitted in special education due process cases. Questions of residency are usually raised as a defense at hearing, not in a motion. Motions to dismiss are usually reserved for circumstances in which OAH lacks subject matter jurisdiction or a case is outside the statute of limitations. The District should keep that in mind when deciding whether to refile its motion to dismiss.