

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014080030

ORDER GRANTING REQUEST FOR
RECONSIDERATION AND SETTING
MEDIATION

On August 22, 2004, the Office of Administrative Hearings issued an order denying the parties' request to reschedule mediation to a date within the resolution session period. On the same date, Sacramento City Unified School District filed a request for reconsideration.

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.)

A school district must convene a meeting to discuss the issues raised in a due process complaint in order to attempt to resolve the dispute. (34 C.F.R. § 300.510(a)(1), (2).) This meeting is commonly known as a resolution session. A resolution session need not be held if the parent and school district agree in writing to waive it (*Id.* at § 300.510(a)(3)(i)) or if the parent and school district agree to use mediation instead of a resolution session (*Id.* at § 300.510(a)(3)(ii)). If the parties agree to waive the resolution session, the 45-day timeline for a due process hearing begins the day after the waiver. (*Id.* at § 300.510(c)(1).) However, the timeline does not automatically begin if the parties agree to use mediation instead of a resolution session. (*Id.* at § 300.510(c).)

DISCUSSION

Sacramento City based its request on the grounds that the parties' "agreed to waive the resolution session on August 4, 2014." Attached as an exhibit was a series of emails

between Daniel Osher, attorney for Sacramento City, and Christian M. Knox, attorney for Student.

In an email dated August 4, 2014, from Mr. Osher to Ms. Knox, he stated, “The District is willing to waive the resolution meeting and proceed directly to mediation.” In Ms. Knox’s response of the same date, she stated, “Yes, we will waive [sic] resolution session.”

The tenor of Sacramento City’s request merits a detailed analysis. Mr. Osher averred that OAH’s denial of the request to move the mediation was based solely on the grounds that the parties had not provided notice that they had “waived the resolution session.” As stated in the order, the request to move the mediation forward was denied because the parties’ submitted no evidence that they agreed to either (1) use mediation instead of a resolution session; or (2) waived the resolution session. As set forth in detail in OAH’s order and again in this order, federal law provides for two distinct circumstances eliminating the need to conduct a resolution session: A resolution session need not be held if the parent and school district agree in writing to *waive* it, or if the parent and school district agree to *use mediation instead of a resolution session* (*Id.* at § 300.510 (a)(3)(ii)). There are different legal consequences for each situation. The two provisions are neither the same, nor interchangeable.

Second, and more troubling, is that Sacramento City appears to be blaming OAH for the parties’ failure to submit a request to move the mediation date evidencing compliance with the law. In a footnote, Mr. Osher stated, “The OAH’s form for requesting that mediations be rescheduled does not reference the resolution meeting or request evidence that the meeting had taken place or been waived.” Mr. Osher is correct about OAH’s form. However, there is no legal requirement that a party use the form that OAH provides as a courtesy. An attorney for a party is reasonably expected to know the law and to comply with it. Relying on a standard form is not a substitute.

Turning to the parties’ request to move the mediation, they made no effort to explain the basis for their request, let alone provide anything showing they met the legal requirements allowing OAH to do so. The communication between the parties evidencing compliance with the legal requirements to move the mediation into the resolution session occurred on August 4, 2014, but it was not attached to their request. Nevertheless, the law encourages quick and informal resolution of these disputes. Accordingly, the request for reconsideration is granted and the mediation is scheduled for August 26, 2014.

DATE: August 22, 2014

/s/

JUDITH A. KOPEC
Division Presiding Administrative Law Judge
Office of Administrative Hearings