

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021030090

ORDER DENYING REQUEST FOR RECONSIDERATION

OCTOBER 4, 2021

On September 15, 2021, the undersigned Administrative Law Judge issued an order granting in part and denying in part Long Beach Unified School District's Motion to Dismiss Issues. On September 29, 2021, Long Beach filed a motion for reconsideration.

APPLICABLE LAW

The Office of Administrative Hearings, known as 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, generally within ten days. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008(a). ("When an application for an order has been made to a judge, or to a court, and refused

in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order.”) The ten-day requirement refers to calendar days, not weekdays or work days. (*Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392.)

DISCUSSION

The motion for reconsideration was not filed within the required time after the initial Order was issued. OAH served the order upon counsel on September 16, 2021. The motion for reconsideration was filed on September 29, 2021. As the motion was not timely made and no explanation has been provided explaining why it could not be or was not timely made, the motion is denied.

In addition, the motion fails to offer new facts, circumstances, or law supporting reconsideration. The motion argues only that the undersigned ALJ misapplied the law and failed to rule upon “the limitation of the time period or how the previous decision will be applied to the current case.”

Long Beach’s motion does not offer new facts. Instead, Long Beach presents the same argument that certain claims in this case should be dismissed because they are similar to issues in a previous case and are thus barred by res judicata and issue preclusion. For example, the motion admits that the issues in the current case involve different time periods than the previous case but argues that the factual setting for the claims are directly linked to the same time period as the issues previously raised and ruled upon. Long Beach asserts that it is impossible to separate the claims into distinct

factual bases. Long Beach applies Ninth Circuit Law regarding a “transactional” test to determine whether matters should be dismissed due to res judicata and issue preclusion, citing a four-part test from *Costantini v. Trans World Airlines* (9th Cir.1982) 681 F.2d 1199, 1201–02. Long Beach notes that the question whether the two suits arise out of the same transactional nucleus of facts was the most important consideration to the Ninth Circuit.

In doing so, Long Beach does not recognize that the actions under the Individuals with Disabilities Education Act proceed differently as to res judicata and issue preclusion than do ordinary civil suits. As noted in the order for which reconsideration is being sought, the IDEA specifically states that nothing in the Act shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.) Therefore, although parties are precluded from relitigating issues already heard in previous due process proceedings, parents are not precluded from filing a new due process complaint on issues that could have been raised and heard in the first case but were not.

Long Beach seeks an advisory opinion about how the previous decision will affect this case. In addition, Long Beach seeks rulings about the time periods at issue. Neither outcome is properly part of a motion to dismiss. Long Beach seeks rulings that require findings of fact, which are properly left to the trier of fact, especially as there is no summary judgment process for special education disputes in California. The Order on the original motion found that the issues raised here were sufficiently separate from those previously decided to allow this matter to proceed, and nothing in the current motion for reconsideration has produced new facts, circumstances, or law justifying disturbing that conclusion.

ORDER

Long Beach has not established the September 16, 2021 Order should be reconsidered. The motion for reconsideration is denied. All dates set in this matter are confirmed.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko

Administrative Law Judge

Office of Administrative Hearings