BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014080281 ORDER DENYING DISTRICT'S MOTION FOR CLARIFICATION OR RECONSIDERATION

This matter was filed on August 6, 2014, and heard on September 30, 2014 and October 7, 2014. The Office of Administrative Hearings issued its decision in this matter on November 12, 2014. On December 9, 2014 District filed a motion for reconsideration and/or clarification of that portion of the decision that directed District to hold an individualized education program meeting within 10 working days of the completion of an auditory processing assessment of Student that was pending at the time of the hearing, if the assessment had not been previously completed and presented at an IEP. District's grounds for its request for reconsideration or clarification was that Student had given District notice on August 22, 2014 that Student would be attending a charter school located outside District's boundaries and not chartered by the District, and District therefore no longer had any obligation to provide Student a free appropriate public education, or to hold an IEP meeting to review the assessment. Student opposed District's motion on December 12, 2014.

APPLICABLE LAW

OAH may reconsider rulings on motions 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.) However, as discussed below, decisions are treated differently than rulings on motions.

Administrative agencies generally lack the power to order reconsideration of their decisions absent specific authority to do so. (*Olive Proration etc. Com. v. Agri. etc. Com.* (1941) 17 Cal.2d 204, 209; *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407–408; *Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1260.) Section 11521 of the Administrative Procedure Act authorizes a state agency to order reconsideration of its administrative adjudication, upon its or a party's application, as long as an order is issued within the time period for reconsideration applicable to the agency's decisions. The OAH

decisions subject to Government Code section 11521 are not final when issued, but become effective after 30 days (absent other orders). (Gov. Code, § 11519, subd. (a).)

However, the Administrative Procedure Act (Gov. Code §§ 11340 *et seq*.) is only applicable in part to special education hearings. (*Poway Unified School District* v. *Student* (May 24, 2010) OAH Case No 2009100310.) Unlike the decisions subject to APA Section 11521, OAH decisions rendered in special education due process proceedings under the Individuals with Disabilities Education Act are not subject to reconsideration by a state agency, but are instead final when issued. Any party wishing to contest the findings and decision in a special education due process proceeding may seek review by bringing a civil action in state or federal district court, within 90 days from the date of the ALJ's decision. (20 U.S.C. § 1415(i); 34 C.F.R. §§ 300.514 and 300.516 (2006); Ed. Code, § 56505, subd. (k).) Government Code section 11521, which authorizes reconsideration of certain OAH decisions is therefore inapplicable to special education decisions, and no other federal or state special education statutes or regulations provide for reconsideration of a decision issued following a special education due process hearing.

DISCUSSION AND ORDER

District seeks reconsideration or clarification of that portion of the decision that directed District to hold an individualized education program meeting within 10 working days of the completion of an auditory processing assessment of Student that was pending at the time of the hearing, if the assessment had not been previously completed and presented at an IEP team meeting. The decision did not direct District to provide Student a FAPE going forward.

The language of the decision is unambiguous and District's motion for clarification is denied. Because there is no provision under the law for reconsideration of a decision issued after a special education due process hearing, District's motion for reconsideration must also be denied.

IT IS SO ORDERED.

DATE: December 24, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings