BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENTS ON BEHALF OF STUDENT,<br><br>v.<br><br>SILICON VALLEY FLEX ACADEMY, EL DORADO COUNTY CHARTER SELPA, SANTA CLARA COUNTY OFFICE OF EDUCATION. | OAH Case No. 2017050647<br><br>ORDER DENYING SANTA CLARA COUNTY OFFICE OF EDUCATION'S MOTION FOR RECONSIDERATION OF ORDER DENYING ITS MOTION TO BE DISMISSED AS A PARTY |

On June 7, 2017, the Office of Administrative Hearings denied Santa Clara County Office of Education's motion to be dismissed as a party. On June 19, 2017, Santa Clara filed a motion seeking reconsideration of that order. On June 20, 2017, Student filed an opposition.

## APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial

responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

There is no provision in special education law regarding reconsideration of orders issued by administrative law judges. 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.)

## DISCUSSION

Santa Clara maintains that it was not responsible for providing or supervising the provision of special education and related services to Student, and therefore, is not a proper party in this matter. Santa Clara attaches to its motion for reconsideration additional information in the form of Silicon Valley Flex Academy's complete application for charter renewal, the memorandum of understanding between Santa Clara and Flex Academy (MOU) and a new declaration by Santa Clara's Administrator of Charter Schools Department.

As the authorizing agency for the charter, Student contends that Santa Clara remained legally obligated to ensure that Flex Academy complied with federal and state laws, including the IDEA. Therefore, Student argues, Santa Clara shared responsibility for ensuring Student received a free appropriate public education.

In support of its charter renewal, Flex Academy's charter petition declares that Flex Academy is an independent local educational agency member of the El Dorado County Charter Special Education Local Plan Area and Flex Academy "shall comply with all state and federal laws related to the provision of special education instruction and related services and all SELPA policies and procedures and shall utilize appropriate SELPA forms." The standard agreement between El Dorado and Flex Academy is attached to the petition for charter renewal.

The MOU outlines Flex Valley's responsibility for "ensuring that all children with disabilities enrolled in the Charter School receive special education and related services in a manner that is consistent with all applicable provisions of state and federal law." The MOU further highlights Santa Clara's role to provide general oversight over Flex Academy's operation. The MOU provides that Santa Clara is available to provide special education services to Flex Academy should Flex Academy choose to contract for those services.

The MOU further sets forth "other conditions" which requires Flex Academy to comply with the terms and conditions of the MOU or risk revocation of the charter. Santa Clara also reserved the right to appoint a Fiscal Advisor if Flex Academy's financial condition raises questions about whether the charter school will be able to meet its financial

obligation and implement the program described in the charter petition. As reflected in the MOU, Santa Clara had the authority to revoke Flex Academy's charter should Flex Academy fail to implement the program described in its charter petition, a program which included providing special education instruction and related services in a manner that is consistent with all applicable provisions of state and federal law. Taken as a whole, the documents in support of the motion for reconsideration only supports the need for a hearing as to Santa Clara's oversight responsibilities over Flex Academy and if Santa Clara becomes the successor LEA with the demise of Flex Academy. Therefore, Santa Clara's motion for reconsideration is denied.

ORDER

Santa Clara County Office of Education's Motion for Reconsideration of Order Denying Motion to be Dismissed as a Party is denied.

DATE: June 22, 2017

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Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings