

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012020002

ORDER DENYING REQUEST FOR
RECONSIDERATION

On March 21, 2012, the undersigned administrative law judge (ALJ) issued a written order following prehearing conference (PHC) listing the issues for determination during the pending due process hearing.¹ On March 20, 2012, Guardian, on behalf of Student (Student), filed a request for reconsideration regarding Issue Number 2 as framed in the order following PHC dated March 21, 2012

District did not file a response to the request.

APPLICABLE LAW

The Office of Administrative Hearings (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 AND ORDER

Student's request for reconsideration is based on the argument that Issue Number 2, as framed in OAH's order following PHC dated March 21, 2012, should have included the allegation that District denied him a free appropriate public education (FAPE) because District failed to assess him for "emotional and behavioral disability," rather than the present allegation that District denied Student a FAPE because District failed to conduct a functional behavior assessment (FBA) of Student. In support, Student referenced his due process complaint (complaint), dated January 27, 2012, where Student discussed some testing issue

¹ The PHC was held on March 19, 2012. The ALJ issued an oral ruling, regarding the Statement of the Issues pending determination at the hearing, during the PHC.

relating to emotional/anger problems. The above argument by Student was extensively discussed during the PHC, and Student was not persuasive based on the record, as discussed below. In this request for reconsideration, Student has alleged no new facts, circumstances, or law in support of his request reconsideration. Thus, as discussed below, Student's request for reconsideration is denied.

As framed in the order following PHC, Issue Number 2 relates to the question of whether District denied Student a FAPE when it failed to conduct a FBA of Student regarding his anger management issues, during the 2009-2010 school year. The issue, as framed, is consistent with Student's statements of the issues as contained in his January 27, 2012 complaint. In his complaint, while Student's included a fact that he "may not have been tested for emotional/anger problems," but, he framed Issue Number 2 as:

Functional Behavior Assessment was denied [Student].

Also, in his PHC statement dated February 17, 2012, among other issues raised by Student, Student framed Issue Number 2 as follows:

District failed to adequately address [Student's] anger management issues, by not conducting a functional behavior assessment.

Further, the record established that both District and OAH understand Student's Issue Number 2 to involve the allegation that District improperly failed to conduct a FBA of him. According to a separate OAH order, dated February 16, 2012, OAH noted that "Student alleges that the District failed to adequately address her anger management issues, especially by not conducting a functional behavior". Also, District PHC statement of March 15, 2012 shows also that District understands Student's Issue 2 to only include an allegation that District failed to conduct a FBA of Student, but no other assessment.

Therefore, based on the totality of the records, and as discussed at the PHC of March 19, 2012, and herein above, the framing of Student's Issue Number 2 is consistent with Student's complaint, as filed.² Student has presented no new information or evidence to show that the understanding of the issue and its framing in the order following PHC is incorrect. The request is not accompanied by a sworn declaration. Thus, as no new facts, circumstances, or law in support of his request reconsideration is presented, the request for reconsideration must be denied.

² During the PHC, Student's Guardian was advised that he could seek to amend the complaint in order to include all other issues he wants determined in a due process hearing. Additionally, Student may file a separate complaint if Student desires to address additional issues.

ORDER

1. Student's request for reconsideration is denied.

IT IS SO ORDERED.

Dated: March 21, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings