

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ELK GROVE UNIFIED SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016020899

ORDER GRANTING MOTION FOR  
RECONSIDERATION AND DENYING  
MOTION TO DISMISS

On May 3, 2016, the undersigned administrative law judge issued an order denying Student's motion to dismiss. On May 17, 2016, Student filed a motion for reconsideration of his motion to dismiss. On May 18, 2016, Elk Grove Unified School District filed an opposition to the motion arguing that the motion for reconsideration does not establish any new facts upon which to grant the motion.

APPLICABLE LAW

The Office of Administrative Hearings 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.)

OAH may hear due process claims arising under the Individuals with Disabilities Act. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) 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].) However, this limited jurisdiction does

not include jurisdiction over claims alleging a school district's failure to comply with a settlement agreement. (*Wyner, supra*, 223 F.3d at p. 1030.)

## DISCUSSION

### *Reconsideration*

Student alleges new facts in support of his motion for reconsideration. Specifically, Student's representative represents that Student received a copy of an audio recording of the January 12, 2016 individualized education program team meeting after the ruling on the motion to dismiss, which purportedly provides additional facts to support his motion to dismiss the matter.<sup>1</sup> The motion was filed in a timely manner.

Accordingly, Student's motion for reconsideration is granted.

### *Motion to Dismiss*

Student moves to dismiss this matter for lack of jurisdiction. The sole issue raised in Elk Grove's request for due process hearing (complaint) is whether Elk Grove is entitled to conduct assessments of Student pursuant to the January 12, 2016 assessment plan without Parent's consent. Student asserts that OAH is without jurisdiction to resolve the issue raised in the complaint because a global settlement agreement between the parties resolved the issue. In the May 3, 2016 order denying Student's motion to dismiss, the ALJ found the complaint to be properly before OAH, and within its jurisdiction, because the complaint relates to the purported refusal of Parent to consent to an assessment of Student outside of the terms of the settlement agreement. The complaint does not seek enforcement of the settlement agreement.

On reconsideration, Student asserts that he obtained an audio recording of the January 12, 2016 IEP team meeting, which allegedly shows Parent was not involved in a discussion or determination about the necessity of an additional assessment of Student. Elk Grove disputes the facts alleged by Student relating to the January 12, 2016 IEP team meeting and the related assessment plan.

Student cannot seek resolution of this factual dispute pursuant to a motion to dismiss. Parties must be afforded a full and fair opportunity to be heard on the matter at hearing. Moreover, the fact of the audio recording and the alleged lack of involvement by Parent in the portion of the IEP team meeting involving discussion and determination of an assessment

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<sup>1</sup> Student's motion is not accompanied by a sworn declaration attesting to the facts contained therein. However, central to Student's motion is that he received an audiotape recording of the January 12, 2016 IEP team meeting on May 8, 2016, a fact Elk Grove does not dispute in its opposition to the motion for reconsideration. Therefore, the new fact will be considered for purposes of the motion for reconsideration.

plan does not support Student's motion to dismiss based on a lack of jurisdiction, as it does not show that the complaint is merely a request to enforce the settlement agreement. Student's assertion that the settlement agreement between the parties resolved the issue raised in the complaint, and the facts surrounding the January 12, 2016 IEP team meeting, are defenses Student can raise at hearing.

ORDER

1. The motion for reconsideration is granted.
2. Based on reconsideration of Student's motion to dismiss, Student's motion to dismiss is denied.

IT IS SO ORDERED.

DATE: May 23, 2016

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DENA COGGINS  
Administrative Law Judge  
Office of Administrative Hearings