BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT on behalf of STUDENT,<br><br>v.<br><br>POWAY UNIFIED SCHOOL DISTRICT. | OAH CASE NO. 2009020240<br><br>ORDER DENYING REQUEST FOR RECONSIDERATION |

On June 8, 2009, Administrative Law Judge (ALJ) Carla L. Garrett issued her decision following the due process hearing in this matter. In her decision, ALJ Garrett found that Poway Unified School District (District) failed to offer Student a free and appropriate public education (FAPE) for the 2007-2008 school year, as well as the first half of the 2008-2009 school year. Consequently, ALJ Garrett found that Student was entitled to reimbursement for payment of tuition to the Fusion Academy (Fusion), a private school Parents had placed Student, as well as reimbursement for transportation. However, due to unreasonable actions on the part of Student's parents, ALJ reduced Student's reimbursement. Specifically, ALJ Garrett found that Parents should have advised District immediately upon their January 7, 2008 enrollment of Student in a new school so that District could cease all home-hospital services. Parents' failure to do so resulted in Student receiving home-hospital instruction for 12 additional school days, until January 23, 2008. Consequently, ALJ Garrett reduced the tuition reimbursement award by $6,131.16. The decision indicated that ALJ Garrett based this calculation on evidence submitted by Student that Parents had paid Fusion $8,175.00 for Student's tuition in January 2008. The evidence further showed that Fusion held session 16 times in January 2008, which, prorated, amounted to $510.93 per day. Twelve days in January 2008 amounted, therefore, to $6,131.16. On June 22, 2009, Student filed a motion for reconsideration claiming that ALJ Garrett's calculation was erroneous. On June 25, 2009, District filed an opposition to Student's motion for reconsideration. On June 25, 2009, Student filed a reply to District's opposition.

The declaration of John Malki, the director of Fusion, accompanied Student's motion for reconsideration, and stated that the $8,175.00 Parents paid to Fusion "was paid <u>during</u> January, not the amount of money that was paid <u>for</u> January." The declaration further stated that the $8,175.00 payment in January 2008 was made against charges for the entire semester of classes.[1] The declaration also indicated that based on Fusion's records, Student only

[1] The declaration indicated that Student was enrolled in five subjects, and was charged $1,680.00 for 20 sessions of Biology, $1,680.00 for 20 sessions of Geometry, $1,620.00 for 17 sessions of Art, $1,470.00 for 17 session of English 10, and $1470.00 for 17 sessions of World History, totaling $7,980.00.

attended school on 11 days between January 7, 2008 and January 23, 2008, and, consequently, was charged only a total of $2,453.20 from January 7, 2008 through January 23, 2008. Accordingly, Student contends that the reimbursement reduction should have been $2,453.20, and not $6,131.16.

District contends that reconsideration must be denied, as Student's motion is an attempt to reopen and supplement the record with additional evidence. District further contends that Student had the opportunity to introduce evidence in her case and failed to do so. In addition, District contends that reopening the record to include the supplemental evidence would deny District the right to cross-examine Mr. Malki, who, incidentally, was not listed on Student's witness list. Finally, District contends that Student is not merely arguing that ALJ Garrett made a mathematical error, but has offered additional evidence to support a different manner of calculating the reimbursement. According to District, Student should have clarified the nature of the payments during the hearing, and has failed to establish why supplemental evidence was not provided during Student's case-in-chief. For these reasons, District contends that reconsideration must be denied. District's position is correct.

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.)

Here, Student argues that the $6,131.16 reduction ALJ Garrett ordered was based on "incorrect information" and an "incorrect assumption." However, ALJ Garrett's calculation was based on the evidence that Student, herself, presented at the hearing. If that evidence needed clarification or supplementation, it was incumbent upon Student to present it at the time of hearing, and not after the closing of the record. Student alleges no new facts, circumstances, or law in support of the request for reconsideration. Accordingly, Student's request for reconsideration is denied.

It is so ordered.

Dated: July 02, 2009

/s/

CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings