

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CORONADO UNIFIED SCHOOL
DISTRICT and SWEETWATER UNION
HIGH SCHOOL DISTRICT.

OAH CASE NO. 2010080734

ORDER GRANTING IN PART AND
DENYING IN PART REQUEST FOR
RECONSIDERATION

On October 7, 2010, the undersigned administrative law judge (ALJ) issued an order following a prehearing conference (PHC) held on October 6, 2010. On October 11, 2010, Student sent a letter to the ALJ and included a copy of a letter she had previously sent the Districts' attorney concerning the wording of Issue A in the order of October 7, 2010. In addition, she requested that an additional issue be added concerning events in June 2008, although the ALJ had determined during the PHC that these events preceded the commencement of the two year statute of limitations for filing requests for due process hearing and were barred by the statute.¹ The ALJ has determined that this letter and its attachment constitute a request for reconsideration of the order following the PHC.

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 California Code of Regulations, section 3042, subdivision (a) defines "placement" as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the individualized education program[.]"

The statute of limitations in California for filing a complaint pursuant to the Individuals with Disabilities Education Act (IDEA) limits claims that were or should have been known to the party filing the complaint more than two years prior to the date of filing unless certain exceptions are found to exist. (Ed. Code, § 56505, subd. (1); see also 20

¹ The request for due process was filed on August 19, 2010.

U.S.C. § 1415(f)(3)(C).) However, section 1415(f)(3)(D) of title 20 of the United States Code and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or to the local educational agency's withholding of information from the parent that was required to be provided to the parent.

DISCUSSION AND ORDER

Student's request for reconsideration was timely, and will be granted in part. During the PHC, the ALJ found that Student's complaint did not contain sufficient facts to support a claim that the Districts denied Student a free appropriate public education (FAPE) because it did not provide him with sufficient supports and services. The issue, as worded by Student in his complaint, stated "[the Districts] violated the rights of [S]tudent by failing to identify and make a placement offer that met the student's identified needs." Based on section 3042, subdivision (a) of the California Code of Regulations, Issue A in the order following the PHC will be reworded to include reference to section 3042. Issue A, as amended shall read, "Did Coronado District and Sweetwater District deny Student a free appropriate public education (FAPE) by failing to identify and make a placement (as defined in section 3042 of the California Code of Regulations) offer that would meet Student's unique needs and provide him with educational benefit for the 2008-2009, 2009-2010, and 2010-2011 school years?"

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As determined by the ALJ during the PHC, Student did not allege facts in his complaint that supported an extension of the statute of limitations beyond two years to include claims related to an IEP meeting in June 2008. In his request for reconsideration, Student has not alleged any new facts, circumstances, or law in support of his argument in support of extending the statute of limitations. Therefore, the request of Student to add a new issue concerning claims from June 2008 is denied.

Student's request for reconsideration is granted in part and denied in part.

IT IS SO ORDERED.

Dated: October 21, 2010

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings