

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT, CALIFORNIA DEPARTMENT OF EDUCATION, CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY, CALIFORNIA DEPARTMENT OF MENTAL HEALTH, AND LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH.

OAH CASE NO. 2010110500

ORDER DENYING STUDENT'S MOTION FOR RECONSIDERATION OF ORDER GRANTING LAUSD'S MOTION TO DISMISS

On November 12, 2010, Student filed a Due Process Hearing Request (complaint) against the Los Angeles Unified School District (LAUSD), California Department of Education (CDE), California Health and Human Services Agency (CHHS), California Department of Mental Health (CDMH), and Los Angeles County Department of Mental Health (LACDMH). On December 1, 2010, LAUSD filed a Motion to Dismiss, on the grounds that Student did not allege that LAUSD denied Student a free appropriate public education (FAPE). On December 6, 2010, Student filed an opposition.

By Order of December 8, 2010, the ALJ granted LAUSD's motion, dismissing it as a party. On December 9, 2010, Student filed a Motion to Reconsider the Order of LAUSD's Dismissal. LAUSD filed opposition on December 14, 2010.

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.)

The purpose of the Individuals with Disabilities Education Act (IDEA) (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.)

## DISCUSSION

Student alleges that the Order granting LAUSD’s dismissal fails to consider other reasonable readings of the complaint’s allegations. Student cites the complaint’s paragraph 23, which states that Student’s school recommended making an AB3632 referral to LACDMH at Student’s “. . . IEP on December 14, 2009 and completed at an IEP on March 8, 2010.” The ALJ read this allegation as an assertion that the IEP team recommended and agreed that an AB3632 referral should be made at an IEP which started at a December 2009 meeting and completed at a March 2010 meeting.

Thereafter, the complaint alleges that LACDMH completed an assessment and recommended outpatient and family therapies (§ 24), that LAUSD scheduled an October 14, 2010 IEP, and that LACDMH cancelled the IEP on October 13, 2010, because it was no longer attending IEPs which concerned AB 3632 services due to the Governor’s cut in funding (§25). The complaint does not further cite the AB3632 referral nor provide a date for the LACDMH AB3632 assessment. The ALJ concluded in granting LAUSD’s dismissal that the complaint did not contain allegations indicating that LAUSD violated its LEA duties regarding timely referral, assessment, and IEP scheduling.

The Student now argues that paragraph 23 alleges that the AB3632 referral was completed on March 8, 2010. The ALJ acknowledges that this is a possible and not wholly unreasonable interpretation of paragraph 23 and, if so read, may have affected the ALJ’s analysis of LAUSD’s dismissal motion. IDEA intends that students and parents have efficient access to due process proceedings with proper parties to resolve conflicts regarding the provision of FAPE; pleadings need to be read in a manner consistent with such policy.

If the AB3632 referral was completed in March 2010, the parent would have signed and provided consent. (5 Cal. Code Regs, § 60040(a)(2).) Student therefore asserts that LAUSD, as the LEA, was required to assure completion of the mental health assessment

within fifty (50) days<sup>1</sup> of the parental consent per California Code of Regulations, title 5, section 60045(d).<sup>2</sup> (Motion, p. 3.) Student argues that LAUSD failed to meet its obligations of holding a timely IEP to review the LACDMH AB3632 assessment because LAUSD did not schedule the IEP until October 14, 2010 (220 days after parental consent).

Student's argument is based upon a misstatement of the law. If the complaint's paragraph 23 is interpreted as Student proposes, the AB3632 referral packet contained parental consent. However, the consent was for referral, not assessment. Section 60040(a)(2), provides that an IEP team may make the referral only if certain criteria are met, including the:

“ . . . written parental consent for referral of the pupil to community mental health service, for the release and exchange of all relevant information between the LEA and the community mental health service, and for observation of the pupil by qualified mental health professionals in an educational setting.”

After the referral, the community mental health service (here, LACDMH) reviews the packet documentation to determine if assessment is necessary, referral inappropriate, or incomplete (§60045(a)). When the mental health assessment is necessary, LACDMH :

“ . . . shall notify the LEA, develop a mental health assessment plan, and provide the plan and a consent form to the parent, within 15 days of receiving the referral from the LEA . . . ”  
(§60045(b).)

Student erroneously uses the date of the parental consent for referral as the marker for beginning the IEP scheduling timeline. LAUSD's IEP scheduling duties began with the parental consent to assess, obtained by LACDMH for its proposed assessment plan. Even if the complaint's paragraph 23 is read to mean the parent provided consent for referral in March 2010, it does not commence a timeline for LAUSD to schedule an IEP.

Student does not allege when LACDMH determined the referral was appropriate and an assessment was necessary. The complaint does not state when LACDMH gave parent a proposed assessment plan or when parent signed consent to assess. The complaint does not give the date of the mental health assessment report. Absent such dates, there are no allegations which create a conflict between Student and LAUSD regarding the timeliness of the October 2010 IEP to consider the LACDMH AB3632 assessment. The

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<sup>1</sup> Student fails to note that the 50-day timeline was extended to 60 days by AB1662, Chapter 653, Statutes of 2005, on October 7, 2005.

<sup>2</sup> All further section references are to California Code of Regulations.

allegations, read in the most favorable light, do not indicate that the October 14, 2010 IEP was untimely.

Student further asserts that LAUSD failed to timely hold an IEP, after LACDMH cancelled the October 14, 2010 IEP. This due process complaint was filed November 12, 2010. Absent the date of parental consent for assessment, the allegations do not create a conflict with LAUSD because a timely IEP could still be held after the complaint's filing.<sup>3</sup>

Student has not provided new facts or law which warrants reconsideration.

#### ORDER

Student's Motion for Reconsideration of Order Granting LAUSD's Motion to Dismiss is denied.

Dated: December 15, 2010

/s/

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CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>3</sup> Student has acknowledged that LAUSD held an IEP on November 18, 2010, with LACDMH attending and offering to provide the recommended outpatient mental health services.