

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COMPTON UNIFIED SCHOOL DISTRICT
AND LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011020212

ORDER DENYING STUDENT'S
MOTION FOR RECONSIDERATION

On April 14, 2011, the Los Angeles Unified School District (LAUSD) filed a motion to dismiss those claims in Student's amended complaint that were beyond the applicable two-year statute of limitations. Student did not file a response to LAUSD's motion. The undersigned administrative law judge granted the motion in an order issued on May 2, 2011. That same day, Student filed a motion for reconsideration of the order. LAUSD filed an opposition to the motion for reconsideration on May 5, 2011.

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.)

DISCUSSION AND ORDER

Student's attorney states that she inadvertently overlooked LAUSD's motion to dismiss but filed Student's motion for reconsideration as soon as she became aware of it. However, even accepting Student's present motion for reconsideration as Student's opposition to LAUSD's motion to dismiss, his motion for reconsideration must be denied.

A request for a due process hearing "shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, subd. (l).) This time limitation does not apply to a parent if the parent was prevented from requesting the due process hearing due to either: 1) specific misrepresentations by the local educational agency that it had solved the problem forming

the basis of the due process hearing request; or 2) the withholding of information by the local educational agency from the parent that was required to be provided to the parent under special education law. (*Ibid.*; 20 U.S.C. § 1415(f)(3)(D).)

Student states that his amended complaint falls under the second exception to the statute of limitations because he contends LAUSD did not inform his grandmother, who was the holder of his educational rights in June 2008 that it was convening an individualized education program team meeting for Student and did not inform her that LAUSD was changing his placement. Student alleges that his holder of educational rights did not become aware of the changes until sometime after February 4, 2009, when the statute of limitations would otherwise have begun to run in this case based on the date of filing of Student's complaint.

However, none of the facts stated by Student in his motion for reconsideration were alleged in his amended complaint. The amended complaint on its face does not contain facts that come within the exception to the statute of limitations. Student does not provide a declaration to support his new statement of facts and, importantly, does not give any explanation as to why the facts supporting the exception to the statute of limitations were not alleged in his amended complaint. If Student wishes to add those facts he must do so by moving to amend his complaint; the complaint cannot be amended by piecing together statements made in other pleadings.

ORDER

Student's motion for reconsideration is denied.

Dated: May 6, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings