

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT; GRANADA HILLS CHARTER
HIGH SCHOOL

OAH CASE NO. 2011081103

ORDER DENYING GRANADA HILLS
CHARTER HIGH SCHOOL'S MOTION
FOR RECONSIDERATION

On October 26, 2011, the undersigned administrative law judge issued an order denying the Motion to Dismiss filed by Granada Hills Charter School (GHCHS). On November 1, 2011, GHCHS filed a motion for reconsideration. As discussed below, the motion is denied.

APPLICABLE LAW

The Office of Administrative Hearings (OAH) 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.)

Under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.), 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).) 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.) OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.).

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A). The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that

the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

The pleading requirements of the IDEA should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.¹

DISCUSSION AND ORDER

On August 29, 2011, Student filed a Request for Due Process Hearing (complaint) naming Los Angeles Unified School District (LAUSD) and GHCHS as respondents. The complaint sought reassignment of Student from one English class to another. It alleged that Student's assigned English teacher was causing him anxiety and other distress; that Parents and this particular English teacher had a negative pre-existing history involving another sibling; and that Respondents' refusal to reassign Student constituted a denial of a free appropriate public education (FAPE). The complaint alleged that Student had a 504 plan in place to provide accommodations for a medical condition. It did not allege that Student had an individualized educational program (IEP) in place, nor that he had ever been assessed for, or made eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.).

On September 21, 2011, GHCHS filed a Motion to Dismiss on the grounds that OAH lacks jurisdiction over the issues stated in the complaint. The Motion attached a declaration attesting that Student does not have an IEP in place, nor has he ever been made eligible for special education and related services under the IDEA.

On September 29, 2011, all previously set dates in this matter were vacated and the timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) recommenced as of September 29, 2011. GHCHS' Motion to Dismiss was held in abeyance until the time to file a Notice of Insufficiency (NOI) had elapsed. Neither respondent filed an NOI. GHCHS' Motion to Dismiss was then denied on October 26, 2011.

GHCHS now moves for reconsideration. Because Student does not have an IEP in place, nor has he ever been made eligible for special education and related services under the IDEA, GHCHS interprets the complaint to contain allegations arising *solely* under Section

¹ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), and therefore moves for reconsideration, arguing again that OAH does not have jurisdiction.

The motion for reconsideration is denied. GHCHS reads the complaint too narrowly, interpreting it to contain allegations arising solely under Section 504. Under the liberal pleading requirements of the IDEA, the complaint can also be fairly read to allege that Student should have been assessed and/or made eligible for special education and related services under the IDEA, should have had an IEP in place, but that respondents failed in those respects, thus denying him a FAPE. Such allegations would relate to the identification, evaluation, or educational placement of the child, or the provision of a FAPE, and thus fall within OAH's jurisdiction. GHCHS did not file a NOI, therefore the allegations of the complaint are deemed sufficient.

Since the complaint, read broadly, can be construed to allege not only violations of Section 504 but also denial of FAPE under IDEA, GHCHS' motion for reconsideration is denied. The October 26, 2011, order, denying GHCHS' motion to dismiss stands.

IT IS SO ORDERED.

Dated: November 03, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings