

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION.

OAH CASE NO. 2011090350

ORDER DENYING REQUEST FOR
RECONSIDERATION OF ORDER
GRANTING AMENDMENT

On December 7, 2011, the undersigned administrative law judge issued an order granting Student's motion to amend the due process hearing request. That same day, the Los Angeles County Office of Education filed a motion for reconsideration, arguing that it had not been given time to respond to the motion, and further opposing amendment on the ground that the facts and/or claims added to the proposed amended complaint were known to Student prior to filing the original complaint and were meritless or irrelevant. The ALJ has considered the merits of LACOE's opposition and the Motion for Reconsideration is denied.

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, a prehearing conference was scheduled for December 7, 2011 at 1:30 p.m. LACOE had not filed its opposition by the morning of December 7, 2011, so the ALJ assumed there was no opposition. However, because LACOE technically had until the end of December 7, 2011 to oppose the motion to amend, its opposition will be considered on the merits. However, as discussed below, LACOE's opposition is meritless.

LACOE cites no authority for its position that amendment is limited to facts that were not previously known to the petitioner. To the contrary, IDEA expressly contemplates that petitioning parties are not required to allege all known claims or facts at the time they request a due process hearing. (See Ed. Code, § 56509 [the IDEA "does not preclude a parent from filing a separate due process hearing request on an issue separate from a due process hearing request already filed."]; see also Ed. Code, § 56502 [setting forth standards for content of due process hearing request and conditions for amendment without any limitation that amendment was barred unless all known facts or claims were pleaded initially].)

Similarly, LACOE cites no authority for its position that a party is barred from amending a complaint if the respondent believes the new allegations are legally meritless or irrelevant. In essence, LACOE's "opposition" to amendment is that its attorney has concluded the claims are meritless and that the newly alleged facts are irrelevant. LACOE fails to appreciate that the purpose of the due process hearing request is to give it notice of the petitioner's claims and the facts that the petitioner believes supports the claims. It is up to the ALJ to decide at hearing whether the evidence is relevant and the claims have merit. If LACOE disagrees with the allegations in the due process hearing request, its' remedy is not to oppose amendment, but to present its arguments to the ALJ at hearing.

The motion for reconsideration is denied.

IT IS SO ORDERED.

Dated: December 09, 2011

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings