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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

M.S., a minor, by and through her  
Guardian Ad Litem Peggy Sartin,

Plaintiff-Appellee,

v.

LAKE ELSINORE UNIFIED SCHOOL  
DISTRICT, a Local Education Agency,

Defendant-Appellant.

No. 15-56283

D.C. No.  
5:13-cv-01484-CAS-SP

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Christina A. Snyder, District Judge, Presiding

Argued and Submitted February 6, 2017  
Pasadena, California

Before: KLEINFELD, IKUTA, and NGUYEN, Circuit Judges.

Lake Elsinore Unified School District (Lake Elsinore) appeals the district court's order granting reimbursement to M.S. under the Individuals with Disabilities Education Act (IDEA). *See* 20 U.S.C. §§ 1400–1419. The district

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

court had jurisdiction under 20 U.S.C. § 1415(i)(2)(A). We have jurisdiction under 28 U.S.C. § 1291.

Lake Elsinore had no duty under 20 U.S.C. § 1414(a)(2) to conduct a reevaluation of M.S. because the local educational agency did not determine that reevaluation was necessary, M.S.'s parents did not request a reevaluation (as M.S. concedes), M.S.'s teacher did not request a reevaluation, and fewer than three years had elapsed since Dr. Patterson's evaluation. Accordingly, the district court erred in holding that Lake Elsinore had a duty to reevaluate M.S. and procedurally violated the IDEA by failing to do so.

The district court erred in holding *sua sponte* that Lake Elsinore violated the IDEA by holding an individualized education program meeting without M.S.'s parents, because M.S. failed to exhaust this claim at the administrative level.

*Payne v. Peninsula Sch. Dist.*, 653 F.3d 863, 871 (9th Cir. 2011), *overruled on other grounds by Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014) (en banc); *J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 451 (9th Cir. 2010), *aff'g and adopting by reference*, 611 F. Supp. 2d 1097 (E.D. Cal. 2009).

Because M.S. failed to establish that Lake Elsinore violated the IDEA, M.S.'s parents are not entitled to reimbursement. *See Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993).

**REVERSED.**