BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017031306
v.	ORDER GRANTING MOTION FOR RECONSIDERATION AND ORDER FINDING STAY PUT SERVICES
UPLAND UNIFIED SCHOOL DISTRICT.	

On May 17, 2017, the undersigned administrative law judge issued an order finding that Student's Motion for Stay Put was moot in light of District's agreement to provide services to Student as set out in the January 30, 2014 IEP team meeting report. On May 18, 2017, District filed a motion for reconsideration. Student has not filed in response.

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.)

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006) ; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

DISCUSSION

Reconsideration

District makes the motion on the grounds that it incorrectly stated in summation of its argument that it was willing to provide services under the January 30, 2014 IEP report, as

requested by Student. Instead, District meant to say that it would only provide services as provided under the November 1, 2013 IEP report. Because the motion was denied as moot on the basis of the representation that District would provide the services Student requested, District's error resulted in an inappropriate disposition of the motion. Reconsideration is therefore appropriate.

Accordingly, District's request for reconsideration is Granted.

Motion for Stay Put

On reconsideration, it is apparent that there is disagreement between the parties as to whether the November 2, 2013 IEP report or the January 30, 2014 IEP report represents the last agreed upon and implemented IEP. Student attached a copy of the 19-page January 30, 2014 IEP report to his motion. The report appears fully executed, and bears the appropriately-dated signatures of at least five District representatives, including legal counsel. The document itself is stamped "Received Apr 25 2014 STUDENT SERVICES." Beneath the "Consent" block appears Parent's signature, also dated January 30, 2014. The box is checked to indicate that Parent agrees to all parts of the IEP. This suffices to show the last agreed-upon IEP report.

In its opposition to Student's motion, District asserted that "[w]hile Parent stated that '[a]ttached is my child's last IEP agreed by parents… January 30, 2014,' Parent did not attach that IEP, nor did parent provide any evidence or a declaration proving that this IEP was Student's most recently agreed upon and implemented IEP." That assertion is either incorrect, or indicates that Student did not attach a copy of the IEP to the moving papers it sent to District.

Student then filed a sur-reply, and again filed the January 30, 2014 IEP team meeting report. District responded, stating that it does not have a copy of the IEP report with Parent's signature and attaching a copy that was not signed by Parent. District also contended that Parent must declare that the IEP was signed on January 30, 2017. District's copy does not bear a stamp showing receipt of the document by Student Services.

District has conceded that the January 30, 2014 IEP team meeting report as presented by Parent is authentic except as to Parent's signature, and therefore that District did make the offer of placement and services presented therein. District asserts that Parents did not agree to the offer at the January 30, 2014, IEP team meeting, implying that Parent back-dated her signature to January 30, 2014. District may be correct, but there is no rule that a parent must agree to an offer of FAPE on the day of the IEP team meeting or forgo the offer of placement and services. District has not stated anywhere in its filings that the offer was conditioned on being immediately accepted or that it was later withdrawn. Parents had the right to consider the offer and decide whether to agree at their leisure.

Further, the copy provided by Parent has a stamp indicating receipt by Student Services on April 25, 2014. It appears that District was provided a signed copy of the IEP

offer on that date, indicating that Parents took almost three months to decide whether to accept the offer of FAPE, and that they did do so well in advance of filing this action. From the materials provided, Student has established that the last agreed-upon placement called for by Student's IEP process is that represented in the January 30, 2014 IEP team meeting report.

ORDER

District's Motion for Reconsideration is Granted.

Based on reconsideration of Student's Motion for Stay Put, Student shall be maintained in the place and receive the services, accommodations, and supports described in the January 30, 2014 IEP team meeting report throughout the pendency of this matter.

IT IS SO ORDERED.

DATE: June 2, 2017

DocuSigned by:
Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings