BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019051215

ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING REQUEST FOR STAY PUT

On June 18, 2019, the undersigned Administrative Law Judge issued an order denying Student's motion for stay put. On June 28, 2019, Student filed a Motion for Reconsideration of Denial of Stay Put. The Office of Administrative Hearings has not received a response from Torrance Unified School District as of the time of issuing this order.

APPLICABLE LAW

RECONSIDERATION

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, generally within ten days. (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.)

STAY PUT

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.) In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

The law recognizes an exception to stay put in the context of disciplinary proceedings. When a student violates a code of conduct and school personnel seek to order a change in placement that would exceed ten school days, the local educational agency, the parent, and the relevant members of the IEP team shall determine whether the conduct was a manifestation of the student's disability. A parent may appeal the manifestation determination by requesting an expedited due process hearing. (20 U.S.C. § 1415(k); 34 C.F.R. § 300.532).) While the appeal is pending, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45 school-day interim alternative placement, whichever occurs first, unless the parent and the educational agency agree otherwise. (Ed. Code, § 56505, subd. (d); see 20 U.S.C. §1415(k)(4)(A) & 34 C.F.R. §§ 300.532, 300.533.)

For a student who has not yet been determined eligible for special education, stay put protections only apply if the student engaged in behavior that violated a rule or code of conduct of the local educational agency, and the agency is deemed to have had a basis of knowledge that the student suffered from a disability before the occurrence of the behavior that prompted the disciplinary action. (20 U.S.C. § 1415(k)(5)(B).) The agency is deemed to have had a basis of knowledge that a student was a student with a disability if any of the following occurred before the behavior that caused the disciplinary action:

1. The parent has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child needs special education and related services;
2. The parent has requested an evaluation of the child to determine if he is eligible for special education; or
3. The teacher of the child, or other personnel of the educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the agency's director of special education or to other supervisory personnel of the agency.

(20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).)

DISCUSSION

Student alleges new circumstances and legal arguments in support of reconsideration. Specifically, Student argues the narrow definition of "basis of knowledge" pursuant to the disciplinary provisions of the Individuals with Disabilities Education Act does not apply to Student's situation. Student argues Torrance had a basis of knowledge that he might be a student with a disability based, in part, on

Parents' April 2019 written request for a special education assessment. Given its basis of knowledge, Student asserts Torrance was prohibited from graduating him which resulted in a change to his educational placement. Student additionally argues that Torrance provided him with a copy of his procedural safeguards along with its proposed assessment plan and then ignored its duties to provide these protections by graduating him. Student's request for reconsideration is granted.

Students who have been found eligible for special education are entitled to stay put. Students who have not yet been found eligible are entitled to limited protections, including a modified stay put provision applicable only in disciplinary proceedings. Student, at the time of filing his motion for stay put, had not been found eligible for special education, nor was he subject to a disciplinary removal. Student has failed to provide any authority that whether Torrance had a basis of knowledge that he might be a student with a qualifying disability is at issue under the circumstances of this case. On reconsideration, Student fails to provide any persuasive authority for his contention that he was entitled to stay put in his senior class at Torrance High school, or that OAH has the authority to revoke his diploma and rescind his graduation.

ORDER

1. Student's motion for reconsideration is granted.
2. Based on reconsideration of Student's motion for stay put, Student's motion for stay put is denied.

3. All dates set in this matter are confirmed.

IT IS SO ORDERED.

DATE: July 3, 2019

DocuSigned by:
Theresa Ravandi
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Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings