BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CHINO VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015080871 ORDER (1) DENYING REQUEST FOR RECONSIDERATION AND (2) DENYING RENEWED MOTION FOR STAY PUT

On August 19, 2015, Student filed a motion for stay put. On August 25, 2015, Chino Valley Unified School District filed an opposition. On August 26, 2015, Student filed his motion for stay put a second time, with unidentified and unauthenticated exhibits attached. By order dated August 31, 2015, Student's motion for stay put was denied for lack of evidence to establish the placement and services provided for in Student's last agreed upon and implemented IEP.

On September 2, 2015, Student filed a motion for reconsideration, or in the alternative, a renewed motion for stay put. No opposition has been received.

Motion for Reconsideration

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.)

DISCUSSION AND ORDER

Student argues that he did not receive, or have an opportunity to respond to, District's opposition to his stay put motion. Student asserts no new facts, circumstances, or law in support of the request for reconsideration. Student's experienced counsel should be familiar with the information provided on the OAH website that a party wishing to file an opposition to a motion has three business days from the mailing of the motion to send the opposition to

OAH and all other parties.[1] After three business days OAH may rule on the motion. Student could have, and should have, included all relevant evidence and made all applicable arguments in his moving papers. Student's multiple sworn declarations that the opposition was not timely received do not constitute new facts, circumstances or law. Student's contention that his motion was denied on the basis of District's opposition declaration is not grounds for reconsideration.

Accordingly, Student's motion for reconsideration is denied.

Renewed Motion for Stay Put

APPLICABLE LAW

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)[2]; 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.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.].)

The Individuals with Disabilities Education Act mandates that the "location" of services be identified in an educational placement. (20 U.S.C. § 1414(d)(1)(A)(i)(VII).) California's implementing regulations define a "specific educational placement" as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs" (Cal. Code Regs., tit. 5, § 3042, subd. (a).) A school district "must ensure that..[t]he child's placement...[i]s as close as possible to the child's home." (34 C.F.R. § 300.116(b)(3).) The school district "must

[1] See www.dgs.ca.gov/oah/SpecialEducation.aspx.

[2] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

ensure that...[u]nless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled." (34 C.F.R. § 300.116(c).)

DISCUSSION AND ORDER

Student's October 9, 2014 IEP offered placement and services in the 1st through 3rd grade special day class at Glenmeade Elementary School. Student argued that the IEP team agreed to reconvene in May 2015 to determine which program Student would attend for the 2015-2016 school year, when he would be in 4th grade. In August 2015, Student received a letter from District stating that he would be attending the 4th through 6th grade special day class at Student's home school, Oak Ridge Elementary School. Student seeks a stay put placement in the 4th through 6th grade special day class at Glenmeade, rather than Oak Ridge.

In the instant motion, Student submits the sworn declaration of Mother that in Spring 2015, Glenmeade staff assured her that Student would be placed at Glenmeade for the 2015-2016 school year, and ignored her requests for another IEP team meeting. A complete copy of Student's October 9, 2014 IEP is attached to Mother's declaration.

Student's authenticated exhibits establish that the October 9, 2014 IEP was signed and consented to by Mother, as were the January 28 and March 25, 2015 amendments, which addressed a reduction in mainstreaming classes and test participation respectively. Both the October 9, 2014, and January 28, 2015 amendment to change Student's classroom schedule, included the following language regarding placement:

> [Student's] home school is Oak Ridge. Previously, they did not have a K-3 class to meet [Student's] needs. Currently, they have a K-3 class and a 4-6 class. The team feels that it is beneficial to [Student] to finish out third grade at Glenmeade. There will be a transition IEP meeting to discuss schedule for next school year.

This language demonstrates that Student's placement at Glenmeade was temporary. Student would attend 4th grade at his home school, Oak Ridge, in the 4th through 6th grade special day class, but would continue at Glenmeade for the duration of the 2014-2015 school year.

The October 9, 2014 IEP does not state that a transition meeting would take place prior to the end of the 2014-2015 school year, or that Student's placement would be reconsidered at that time. Rather, the IEP states that a transition meeting would take place to discuss Student's schedule for 2015-2016, which logically would take place at the start of the 2015-2016 school year, when information on the schedule for 4th grade classes and related services at Oak Ridge would be available to the IEP team to determine when and into which classes Student would be mainstreamed.

In conclusion, Student's last agreed upon and implemented IEP provided that his placement at Glenmeade was temporary, through the end of his 3rd grade year. Student has progressed to 4th grade, and accordingly, the 4th grade special day class at Oak Ridge was the educational placement called for in Student's IEP. Therefore, the special day class at Glenmeade cannot be the basis for a stay put placement.

Accordingly, Student's renewed motion for stay put is denied.

IT IS SO ORDERED.

DATE: September 11, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings