BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017011078
v.	ORDER DENYING REQUEST FOR RECONSIDERATION
RAMONA UNIFIED SCHOOL DISTRICT.	

On March 21, 2017, Administrative Law Judge Pasewark[1] issued an order that denied Student's request for stay put. On May 3, 2017, Student filed a motion for reconsideration on behalf of Student. On May 5, 2017, District filed an opposition to the reconsideration of stay put.

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.)

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).)

[1] The reconsideration is being addressed by an ALJ other than the one who issued the original order because that ALJ later mediated the case.

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 School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

DISCUSSION

Reconsideration

Student alleges District has given notice of its intent to terminate Student's 1:1 nursing support as of May 5, 2017. Student therefore renews his request to include 1:1 nursing support as part of his stay put special educational placement. The basis for Student's motion is (1) the issue of nursing support is no longer moot, as District has notified Student of its intent to terminate 1:1 nursing support; and (2) Student intends to file an amended complaint alleging new issues. Neither of these contentions alleges new facts or circumstances in support of the request for reconsideration.

While the issue of providing continuing 1:1 nursing support is no longer moot, as the contingency for termination of the temporary 1:1 nursing support has occurred, Student has not overcome the additional ground for denial of his request for stay put. Specifically, (1) 1:1 nursing support has never been a part of Student's agreed upon individualized education program; and (2) the requested stay put order is the precise relief requested in his complaint. As the factual basis for providing 1:1 nursing support continues to be contested, the request for stay put continues to amount to a request for a summary judgment. Further, Student's contention that he intends to file an amended complaint provides no additional information to support his request for reconsideration.

ORDER

Motion for Reconsideration is denied.

DATE: May 8, 2017

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings