BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANAHEIM UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2015090857 ORDER GRANTING REQUEST FOR RECONSIDERATION

On September 30, 2015, the undersigned administrative law judge issued an order denying Student's request for stay put at the Speech and Language Development Center, a non-public school. Said denial of stay put was based upon Student aging out of his elementary school district and transition to a different high school district. On October 16, 2015, Student filed a motion for reconsideration on behalf of Student. District has not filed an opposition to this motion.

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

The motion is timely because it was received within a reasonable time after issuance of the order.

Student cites a recent holding in *D.G. ex rel P.G. v. San Diego Unified School District, (D.G. ex re. P.G.*) 2015 WL 5672354, which was not available at the time of the original motion. In *D.G. ex rel P.G.* the United States District Court for the Southern District of California held in September 2015, that an ALJ had erred in denying a Student's motion for stay put. The court issued injunctive relief granting Student's requested stay put placement. In doing so, the court determined that the protections under *Ms. S. ex rel G. v. Vashon Island Sch. Dist*. (*Vashon Island)* (9th Cir. 2003) 337 F. 3rd 1115, 1134.) do not

depend upon a mid-year transfer between school districts, but rather are invoked upon any dispute regarding appropriate placement upon transfer, and are dependent only upon feasiblity of the school district continuing to provide the last agreed upon placement.

On reconsideration, *D.G. ex rel P.G* is an appropriate anology to Student's case. Student's placement in his non-public school has been part of his individualized education plan since the second grade. Upon completion of the sixth grade, Student transitioned to District, and District offered Student placement in a special day class in a public school. Parents dispute the special day class placement, and filed this request for due process hearing on Student's behalf. Neither party presented any argument to suggest that Student could not feasibly remain in his non-public placement pending determination of this matter. Had Student's complaint disputed a mid-year transfer and placement, the ruling under *Vashon Island* clearly would have been applicable. The ruling under *D.G. ex rel P.G.* supports *Vashon Island* and extends stay put to disputes which occur during end of school year transitions from elementary school districts to high school districts.

Accordingly, Student's request for reconsideration is granted. Student's request for stay put is granted and his placement and services at Speech and Language Development Center are restored as implemented in Student's September 26, 2014 individualized education program.

IT IS SO ORDERED.

DATE: October 21, 2015

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings