BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ALAMEDA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018070814 ORDER GRANTING REQUEST FOR RECONSIDERATION AND REAFFIRMING DENIAL OF STAY PUT

On July 27, 2018, the undersigned administrative law judge issued an Order denying Student's request for stay put. On July 31, 2018, Student filed a motion for reconsideration. As discussed below, reconsideration is granted to consider Student's additional arguments but, upon reconsideration, the denial of stay put remains unaltered and is hereby reaffirmed.

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

On July 20, 2018, Student filed a motion for stay put. On July 23, 2018, Student filed exhibits in support. On July 25, 2018, District opposed. On July 27, 2018, the undersigned ALJ denied Student's motion for stay put.

On July 27, 2018, Student filed a Response to District's Opposition to the Motion for Stay Put, which due to circumstances beyond Student's control was not filed prior to issuance of the Order Denying Stay Put, and was therefore not considered by the undersigned.

On July 31, 2018, Student filed a motion for reconsideration seeking to ensure consideration of the July 27, 2018 Response to District's Opposition to the Motion for Stay Put.

Reconsideration is hereby granted and the July 27, 2018 Response to District's Opposition to the Motion for Stay Put has now been duly considered. Upon reconsideration, however, the result is unchanged and the prior denial of stay put is re-affirmed.

The Response states further information concerning the factual disputes underlying this due process case, which as the prior Order Denying Stay Put stated, are unpersuasive because District's alleged breaches are the disputed gravamen of Student's due process complaint and have not been established as having actually occurred.

The response also distinguishes the facts of two District-cited cases in District's opposition, concerning stay put orders in OAH cases with arguably distinguishable facts. The arguable factual distinctions in the other OAH orders are noted, however the denial of this stay put is based solely on the facts in this case.

Here, pursuant to a settlement agreement, Student attended a private school, which was explicitly agreed not to constitute Student's stay put. Student argues that District's breach of unrelated provisions of the settlement agreement should render the explicit waiver of stay put inoperable. This argument is unpersuasive for the reasons stated in the July 27, 2018 Order Denying Stay Put. The current unavailability of the immediately pre-existing placement at a charter school does not establish an entitlement to remain at the private school. Matriculation from grade-to-grade, from the immediately prior elementary school, to a District middle school, maintains the status quo for purposes of stay put

ORDER

1. Student's Motion for Reconsideration is granted.

2. The denial of Student's Motion for Stay Put is reaffirmed.

IT IS SO ORDERED.

DATE: August 2, 2018

DocuSigned by:
June Lehrman
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JUNE LEHRMAN
Administrative Law Judge
Office of Administrative Hearings