BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

ORCUTT UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2020100618

ORDER GRANTING REQUEST FOR RECONSIDERATION AND PARTIALLY GRANTING MOTION FOR STAY PUT

FEBRUARY 5, 2021

On January 27, 2021, the undersigned Administrative Law Judge, referred to as an ALJ, issued an order denying Student's motion for stay put without prejudice. On January 29, 2021, Student filed a Motion for Reconsideration of Order Denying Motion for Stay Put. On February 3, 2021, Orcutt Union School District filed an opposition. On February 4, 2021, Student filed a reply to Orcutt's opposition.

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, 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.)

DISCUSSION

RECONSIDERATION

Student's motion for reconsideration includes a declaration from Parent with information not previously offered. The information was available at the time Student filed the Motion for Stay Put. Generally, information known at the time a motion is filed but not included in the motion, is not a reason to grant a request for reconsideration. However, the undersigned ALJ denied Student's motion without prejudice and directed Student to refile the motion if Orcutt was not providing Student with all the services listed in his April 9, 2020 individualized education program, referred to as an IEP, through a combination of virtual and in-person learning. Parent's declaration includes a statement that Student does not receive any virtual instruction. Therefore, Student's motion for reconsideration is granted.

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 last agreed upon and implemented

individualized educational program, called IEP, placement 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).)

Courts have recognized, however, that the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) For example, when a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. (*R.F. Frankel v. Delano Union School District* (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing, Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.) A school closure for budgetary reasons requires a "comparable program" in another location for stay put. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Bd. of Ed.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.)

Here, it is impossible for Orcutt to maintain the status quo because of school closures as a result of the Covid-19 global pandemic. For all the reasons listed in the January 27, 2021 Order Denying Stay Put, Orcutt may implement Student's IEP through

a combination of distance learning and in-person instruction. Student's argument that he will not benefit from distance learning is an issue for hearing and not addressed in this Order. (*E.M.C. v. Ventura Unified School Dist.* (C.D. Cal., Oct. 14, 2020, Case No. 2:20-cv-09024-SVW-PD) 2020 WL 7094071. *9.) Student provided a declaration that Orcutt is providing some services in-person but nothing via distance learning. Therefore, Orcutt is ordered to provide all the services listed in Student's April 9, 2020 IEP through in-person learning, distance learning, or a combination of the two.

ORDER

1. Student's Motion for Stay Put is partially granted.
2. Orcutt is to provide Student with 300 minutes daily of specialized academic instruction. Orcutt may provide the services in-person or virtually.

Linda Johnson

Linda Johnson
Administrative Law Judge
Office of Administrative Hearings