BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018060471 ORDER GRANTING MOTION FOR RECONSIDERATION

On July 23, 2018, the undersigned administrative law judge issued an order granting Student's motion for stay put, which identified Student's last agreed upon and implemented placement as Wayfinder nonpublic school with services identified in Student's May 4, 2017 individualized education program.

On August 20, 2018, Saddleback Valley filed a motion for reconsideration, citing newly acquired evidence that Wayfinder lost certification to provide special education and related vision services to students, like Student here, with visual impairment. On August 23, 2018, Student filed an opposition to the motion. On August 24, 2018, Saddleback Valley filed a reply brief. As discussed below, the newly acquired evidence justifies reconsideration of Student's stay put placement.

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)[1]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational

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

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).)

Courts have recognized, however, that because of changing circumstances, 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 (*Vashon Island*), superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School 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.].)

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (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.) "Hawaii's teacher furloughs and concurrent shut down of public schools is not a change in the educational placement of disabled children." (*N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116.)

DISCUSSION

Reconsideration

Saddleback's motion presents a showing of new or different facts, circumstances, or law justifying reconsideration, namely the newly acquired evidence that Wayfinder lost certification to provide special education and related vision services to students, like Student here, with visual impairment. Accordingly, Saddleback's motion for reconsideration is granted.

Stay Put

The July 23, 2018 stay put order determined that Wayfinder nonpublic school, along with services offered in Student's May 4, 2017 IEP, constituted Student's last agreed upon and implemented placement. The stay put IEP designated visual impairment as Student's primary eligibility, indicating that Student wears prosthetics in both eyes. Accordingly, the stay put IEP offered placement at a nonpublic school, in a special day class for 314 minutes per school day, with specialized vision services for 90 minutes weekly; small group speech and language for 60 minutes weekly; individual occupational therapy for 45 minutes weekly; and orientation and mobility for 30 minutes weekly. Additionally, the stay put IEP offered services from a visual impairment specialist to address goals for writing and learning to read in Braille.

Student's stay put placement must be changed as Wayfinder can no longer provide services to visually impaired students.

Stay put provisions seek to preserve the status quo, with regard to the educational placement of a child, during the pendency of due process proceedings. Here, the status quo no longer exists, through circumstances outside of Saddleback's control. (See, e.g., *Vashon Island*, *supra*, 337 F.3d 1115, 1133-1145.) Wayfinder's loss of certification to provide special education and related vision services to visually impaired students is akin to school closure, transfer to a new district, or matriculation. In these situations, Saddleback must provide a placement that, as closely as possible, replicates the placement that existed when the dispute arose, taking into account the changed circumstances. (*Ibid*.; *Van Scoy*, 353 F.Supp.2d 1083, 1086.)

Saddleback's opposition asserted that Student's May 2017 IEP can be implemented at Esperanza Education Center. However, Esperanza does not constitute an appropriate stay put placement because the parties are litigating the very issue of placement at Esperanza and because Esperanza is a district school.

Saddleback's opposition alternatively established that a different nonpublic school, Ocean View, could provide a placement comparable to the placement identified in Student's May 2017 IEP. Further, Ocean View agreed to provide Student's related services in speech and language and occupational therapy as identified in his stay put IEP. Saddleback employs credentialed providers for Student's orientation and mobility and specialized vision services, who will provide those services as part of Student's program, on Ocean View's campus.

In this situation, Ocean View is a placement that, as closely as possible, replicates the placement that existed when the dispute arose, taking into account the changed circumstances. Student's stay put placement shall therefore be Ocean View nonpublic school with implementation of the program and services identified in Student's May 4, 2017 IEP, replicated, as closely as possible.

ORDER

Motion for Reconsideration is granted.

Student's stay put placement shall be Ocean View nonpublic school with implementation of the program and services identified in Student's May 4, 2017 IEP, replicated, as closely as possible.

IT IS SO ORDERED.

DATE: September 7, 2018

DocuSigned by:

COLE DALTON
Administrative Law Judge
Office of Administrative Hearings