BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013041171
v.	ORDER DENYING MOTION FOR STAY PUT
LOS ANGELES UNIFIED SCHOOL DISTRICT.	

On April 26, 2013 Student filed a Request for Due Process hearing (complaint) Student contended in her complaint that District's IEP of February 20, 2013 did not offer her a FAPE. Student's complaint alleges that the District agreed, in a prior Settlement Agreement with Student dated June 13, 2012 (Settlement Agreement), to include weekly language and speech services (LAS) by a nonpublic agency (NPA) as part of Student's educational program for the 2012-2013 school year, and to provide a block of compensatory LAS services. On April 26, 2012, Student concurrently filed a motion for stay put. Student's motion sought continuation of weekly speech and Language services (LAS), and an order that these services be provided by the same NPA.

On May 3, 2013 Administrative Law Judge (ALJ) Alexa Hohensee issued an order denying the motion based upon Student's failure to provide admissible evidence in support of the motion. Specifically, Student failed to provide declarations supporting the contentions raised in the motion as well as a legible copy of the Settlement Agreement upon which Student relied in bringing the motion.

On May 6, 2013, Student filed for the second time the identical motion for stay put but attached a legible copy of the Settlement Agreement. No other evidence was provided. No response was received from District. For purposes of this order, given the denial of the first motion, the current motion shall be construed as a request for reconsideration. Alternatively, this order shall also address the merits of the request for stay put. Based upon the discussion below under either analysis the motion for stay put is denied.

Reconsideration

Student's request for reconsideration contends that Student's continuation of her placement and services more particularly the LAS services set forth in the Settlement Agreement is stay put based upon the most recently implemented IEP. As discussed below, the motion for reconsideration must be denied.

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.)

Here, Other than providing a more legible copy of the Settlement Agreement, Student provided no new evidence demonstrating any changed facts, circumstances, or law, such that reconsideration is not warranted. However, given Student's attempt to renew the motion for stay put the motion is addressed below.

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)[1]; 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 (IEP), 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.)

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, unless the school district and parents agree otherwise. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

Here, not only is Student's motion not supported by a sworn declaration. Student has again failed to submit any evidence regarding Student's last agreed upon and implemented IEP. Student has failed to attach a copy of the last agreed upon IEP and the attached

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

Settlement Agreement alone does not support Student's contentions. As stated in the Order dated May 3, 2013, Student has failed to establish the components of her last agreed upon and implemented placement. Accordingly, Student's motion for stay put is denied.

IT IS SO ORDERED

Dated: May 16, 2013

/s/
STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings