BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>LOS ANGELES UNIFIED SCHOOL DISTRICT. | OAH Case No. 2017060408<br><br>ORDER DENYING REQUEST FOR RECONSIDERATION |

On June 20, 2017, the undersigned administrative law judge issued an order that denied Student's motion for stay put. On June 27, 2017, Student filed a motion for reconsideration. On July 3, 2017, District filed an opposition to the 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.)

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 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).)

However, 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.

(*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

## DISCUSSION

Student's original motion for stay put was filed on June 6, 2017, and argued Student was entitled to continued behavior services past the end date of June 9, 2017, listed in the IEP. District filed an opposition to Student's motion on June 12, 2017, and Student filed a reply to that opposition on June 13, 2017. Student's motion for reconsideration argues District continued to provide behavior services past the June 9, 2017, end date, therefore, this proves Student's argument that District did not intend the behavior services to be temporary. Ignoring the fact that Student could have made this argument in his June 13, 2017 reply, this fact alone does not justify reconsideration. District's argument that it continued to provide the services in an abundance of caution while the motion for stay put was pending is plausible, however the timing is suspect as OAH issued the order denying stay put on June 20, 2017, but District did not discontinue the behavior services until June 28, 2017, the day after Student filed his motion for reconsideration.

District first implemented behavior services for a finite period of time based on a settlement agreement. District then offered a multi-stage IEP with behavior services to fade as part of the first stage, then placement in a kindergarten class at a different school without behavior services for the second part of the IEP.

Student further alleges OAH misapplied the law therefore should reconsider the motion for stay put. Student argues OAH did not conduct an analysis of Student's current educational placement based on Ninth Circuit precedent. However, Student fails to address that a partially implemented, multi-stage IEP, as a whole, is a student's then-current educational placement. (*N.E., by and through his Parents C.E. and P.E., v. Seattle School Dist.* (9th Cir. 2016) 842 F.3d 1093, 1097 (in a multi-stage IEP, once the stage should have been implemented that becomes stay put, even if the student has not yet attended the new stage).) Similar to the situation in Seattle, Student has a two part IEP with the second part scheduled to be implemented at the start of the 2017/2018 school year.

Accordingly, Student's request for reconsideration is Denied.

ORDER

Student's Motion for Reconsideration is Denied.

DATE: July 6, 2017

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings