BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015070576
v.	ORDER GRANTING REQUEST FOR RECONSIDERATION AND PARTIALLY GRANTING MOTION FOR STAY PUT
NEW HAVEN UNIFIED SCHOOL DISTRICT.	

On August 24, 2015, the undersigned administrative law judge issued an order partially granting Student's motion for stay put. On August 24, 2015, New Haven Unified School District filed a request for reconsideration along with a copy of its supplemental brief in opposition to Student's motion for stay put originally filed on August 21, 2015, pursuant to the ALJ's order for additional briefing. New Haven attached a facsimile transmission report confirming delivery of its supplemental brief to the Office of Administrative Hearings on August 21, 2015. The ALJ did not receive this brief prior to issuing her order. Student has not filed a response.

APPLICABLE LAW

Reconsideration

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.)

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 IEP which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625 (*Thomas*).)

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

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.)

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 Sch. Dist*. (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. 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.].)

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) "Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties' expressed objective intent, not their unexpressed subjective intent, governs." (Id. at p. 686.)

DISCUSSION

The ALJ did not receive New Haven's supplemental brief prior to issuing the Order Partially Granting Stay Put. New Haven alleges new facts and circumstances in support of the request for reconsideration. Namely, New Haven asserts that Student's last agreed upon and implemented individualized education program called for placement at Center for Early Intervention on Deafness which is a nonpublic preschool program for students with hearing impairments; that there are no similar nonpublic schools in the county for elementary-aged

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

students; that students who "graduate" from the Center typically attend either a district program or a regional deaf and hard of hearing program in the Hayward Unified School District; that placement at the Center would not be appropriate as Student is nearly six years of age; and that Student should be placed in the next logical progression which it asserts is a special day class in a public school. New Haven's supplemental briefing is accompanied by a sworn declaration by New Haven's Director of Special Education. New Haven's request for reconsideration is granted.

On reconsideration, the ALJ affirms her August 21, 2015 Order Partially Granting Stay Put. Student is currently five years old. The parties' July 31, 2014 settlement agreement which provided Student a home-based applied behavioral analysis program with related services through the 2014-2015 extended school year does not constitute his stay put placement for the reasons specified in the August 21, 2015 Order. Further, Student's last implemented IEP is dated January 11, 2013. The January 11, 2013 IEP constitutes Student's stay put placement, and affords Student a nonpublic school placement with 180 minutes per day of specialized academic instruction with daily support from a paraprofessional trained in applied behavior analysis, an FM system and visual aids; transportation; 30 minutes twice per week of occupational therapy and 30 monthly minutes of consult; 30 minutes per week of individual speech and language services; and 120 minutes per day of one-to-one ABA instruction in a class setting.

New Haven's contention that there are not any nonpublic schools in the county comparable to Center that serve elementary-aged students, does not change the fact that Student's stay put placement is a non-public school placement with related services as specified above in accord with his January 2013 IEP. The suitability of any given nonpublic school is not at issue in this motion for stay put.

ORDER

Student's motion for stay put is partially granted. Student's stay put placement is that specified in the January 11, 2013 IEP.

IT IS SO ORDERED.

DATE: September 1, 2015

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings