BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CAMPBELL UNION HIGH SCHOOL DISTRICT AND

SANTA CLARA COUNTY OFFICE OF EDUCATION.

OAH CASE NUMBER 2020080779

ORDER GRANTING REQUESTS FOR RECONSIDERATION AND GRANTING IN PART AND DENYING IN PART MOTION FOR STAY PUT

SEPTEMBER 11, 2020

On September 2, 2020, the undersigned Administrative Law Judge issued an order granting Student's motion for stay put, identifying the January 16, 2019 individualized education program, called an IEP, as the stay put educational program and ordering Campbell Union High School District and Santa Clara County Office of Education to provide the related services in the home for distance learning, and at school when appropriate.

On September 4, 2020, Santa Clara County filed a timely motion for reconsideration. In support of its motion for reconsideration, Santa Clara County attached a declaration by Santa Clara County's director of special education, Jennifer Ann. Ms. Ann declared that she did not receive the motion for stay put until August 28, 2020, as Student faxed the motion for stay put to a different Santa Clara County department and not to Ms. Ann. On September 4, 2020, Campbell Union filed a joinder to Santa Clara County's motion and filed a timely motion for reconsideration. The Office of Administrative Hearings, referred to as OAH, did not receive a response from Student.

APPLICABLE LAW

OAH 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 filed his Request for Due Process Hearing, called a complaint, with OAH on August 27, 2020. According to the proof of service filed by Student, Student served Ms. Ann the complaint on August 27, 2020. According to Student's proof of service, Ms. Ann was served Student's motion for stay put by facsimile on August 27, 2020. A

corrected proof of service by Student indicated that Campbell Union's director of special education, Daron LaFranchi was served with the motion for stay put by certified mail on August 28, 2020. However, the complaint was not served on Campbell Union until August 31, 2020, according to a corrected proof of service filed by Student on August 31, 2020.

Customarily, OAH will grant parties at least three business days to respond to a motion. Therefore, Santa Clara County had until the end of business day on September 2, 2020, and Campbell Union until September 3, 2020, to timely file their oppositions. On September 2, 2020, Santa Clara County filed its opposition to Student's motion for stay put, which OAH received after the ALJ ruled on the stay put motion. Campbell Union filed its opposition on September 3, 2020. Accordingly, based on these circumstances, and to allow for consideration of Santa Clara County's and Campbell Union's timely oppositions to Student's motion for stay put, Santa Clara County's and Campbell Union's motions for reconsideration of the September 2, 2020 Order Granting Motion for Stay Put is granted.

STAY PUT

APPLICABLE LAW

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.) However, courts have recognized 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).)

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).)

In its opposition, Santa Clara County states that the supports, services, and placement called for in the January 2019 IEP were provided to Student, until March 2020 when Santa Clara County and Campbell Union closed its classrooms due to the COVID-19 pandemic. Santa Clara County contends that for the remainder of the 2019-2020 school year since the school closures, Student participated in emergency remote instruction and related services that approximated his most recently implemented IEP to the greatest extent feasible during the emergency closure. For the 2020 extended school year, Student was provided 240 minutes daily of instructional material and some related services via teletherapy.

Student's stay put educational program pending the resolution of this due process matter is the January 16, 2019 IEP. The January 16, 2019 IEP is the last agreed upon IEP to be implemented. The supports and services called for in the January 16, 2020 IEP were implemented at school, and to a limited extent, through distance learning due to the school closure, and restrictions for in-person instruction and services. The direct services called for in the IEP had not been implemented in the home. Therefore, upon reconsideration, Student's request for an order directing Campbell Union and Santa Clara County to provide the related services in the home as stay put pending the resolution of this matter is denied.

However, Student's motion for stay put of the January 16, 2019 IEP is granted. Campbell Union and Santa Clara County shall continue to provide Student the educational program called for in the January 16, 2019 IEP as stay put, in a manner that approximates the IEP as closely as possible in light of the school closure and the restrictions for in-person instruction and services imposed by COVID-19 health orders. This order makes no determination of whether the educational program offered by Santa Clara County and Campbell Union pending the resolution of this matter is a comparable program for stay put purposes, nor does this order preclude Student from raising claims for a denial of a free appropriate public education based on alleged violations of stay put.

IT IS SO ORDERED.

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Rommel P. Cruz
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Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings