

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015060967

ORDER ON RECONSIDERATION,
REAFFIRMING DENIAL OF STAY
PUT

On June 30, 2015, the undersigned administrative law judge issued an order denying Student's motion for stay put. On July 1, 2015, Student filed a motion for reconsideration. On July 2, 2015, District opposed. As discussed below, Student's motion for reconsideration alleges new facts warranting reconsideration; however, on reconsideration, stay put is again denied.

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

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.)

DISCUSSION AND ORDER

Student supplements the original motion for stay put with additional facts, that Student had attended a non-public school for several years prior to the IEP here in question, and was aging out of the school district that had placed him there. Thus, Student argues, although the IEP contained an explicit June 30, 2015 end date for the nonpublic school funding, it was not intended to be temporary, thus distinguishing *Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8 and *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.

The additional facts warrant reconsideration of the denial of stay put, but are unpersuasive. The prior years' IEP's are not persuasive that the intent of this IEP was indefinite funding. Further, the fact that Student was aging out of the school district, which placed him at the nonpublic school, does not alter the clear language of the IEP.

It is equally likely that the former school district, by placing the end date in the IEP, explicitly intended the nonpublic school not to constitute stay put, and explicitly intended the new school district not to be bound thereby. Since Student's arguments regarding the parties' intentions are not persuasive in light of the explicit June 30, 2015 end date, the legal citations cited above are not distinguishable, and stay put is again denied.

IT IS SO ORDERED.

DATE: July 03, 2015

/s/

JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings