

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2015071255

ORDER GRANTING STUDENT'S
MOTION FOR RECONSIDERATION
AND DENYING STUDENT'S MOTION
FOR STAY PUT

On July 21, 2015, Parents on behalf of Student filed a motion for stay put. On July 24, 2015, San Dieguito Union High School District filed an opposition to the motion. San Dieguito supported its opposition by attaching declarations by Rachel Page and Dorothy Guenter, San Dieguito program specialists. San Dieguito contended that the last consented to and implemented Individualized Education Program was the March 5, 2015 IEP adopted by Student's former district, Encinitas Union Elementary District.¹

On July 31, 2015, OAH, by the undersigned, issued an order denying Student's motion for stay put.

On August 10, 2015, Student filed a motion for reconsideration of the July 31, 2015 order on grounds that "the last consented to Individualized Education Program is not March 2015, but in fact March 12, 2014." Student contended that the supporting declarations submitted by San Dieguito were inaccurate. In support of his motion, Student attached a partial copy of an IEP dated March 12, 2014.

On August 11, 2015, OAH, by the undersigned, issued an order directing the parties to submit copies of the March 12, 2014 and March 5, 2015 IEP's. Student filed copies of the two IEP's on August 11, 2015. San Dieguito filed copies of the two IEP's on August 12, 2015.

APPLICABLE LAW AND DISCUSSION OF 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, §

¹ Much of both the motion and opposition argue the merits of Student's complaint rather than which IEP was last implemented.

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.)

In the interest of justice, Student's motion for reconsideration is granted so as to permit a review of the two IEP's in question to determine which was the last consented to and implemented IEP.

APPLICABLE LAW AND DISCUSSION AS TO THE REQUEST FOR 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)²; 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.)

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].)

In examining the March 5, 2015 IEP, it is clear that Student's mother consented to it by her signature on April 7, 2015, and checking the box which states: "I agree to all parts of the IEP."

Student's last implemented IEP requires that he be placed in a moderate special day class with 1090 minutes of specialized education instruction per week; 900 minutes of speech and language services per year; 300 minutes per year of occupational therapy consultation; 600 minutes of occupational therapy services (half individually and half group); 3360 minutes of behavior intervention services per year by a non-public agency; 1800

² All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

minutes per year of Adapted Physical Education services; and a one-to-one aide throughout the day.

Stay put requires that San Dieguito provide Student with the same or similar program in the March 5, 2015 IEP. Ms. Guenter and Ms. Page, who are program specialists at San Dieguito, stated in their declarations, that San Dieguito's TAP program is the "most similar" program it has to the TAP class at Flora Vista. Both also declared that Diegueno Middle School does not have a moderate special day class offered for Student to attend. Student has failed to submit any evidence in contradiction to the declarations.

As stated above, stay put requires that Student be placed in a program similar to that in his last consented to and implemented IEP, which is the March 5, 2015 IEP by Encinitas.

Accordingly, Student's motion for stay put is denied.

ORDER

1. Student's motion for reconsideration is granted.
2. On reconsideration, Student's motion for stay put is DENIED.

IT IS SO ORDERED.

DATE: August 12, 2015

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings