

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ANAHEIM UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2015090857

ORDER GRANTING DISTRICT'S
REQUEST FOR RECONSIDERATION;
ORDER GRANTING STUDENT'S
MOTION FOR STAY PUT

On October 21, 2015, the undersigned administrative law judge issued an order granting Student's Motion for Reconsideration of Student's Stay Put placement, and issued a new finding and order that Student's stay put placement was his previous non-public school. At the time of issuance of the Reconsideration order, OAH had not received a Response or Opposition to Reconsideration from District. Later that day, on October 21, 2015, OAH received District's Opposition to Reconsideration, which was not available to the ALJ in determining her Order Granting Reconsideration of Stay Put. On October 30, 2015, District filed a Motion for Reconsideration of the Order of Reconsideration of Stay Put. As of November 6, 2015, OAH has received no Response or Opposition to District's request for Reconsideration. Thusly, as of November 6, 2015, ample time has passed for both parties to argue and/or oppose the underlying request for reconsideration of Student's stay put placement.

There is no provision in special education law regarding reconsideration of orders issued by administrative law judges. 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. (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 AND ORDER OF RECONSIDERATION

District contends its Opposition to Student's Motion for Reconsideration of Stay Put was timely filed on October 21, 2015, at 3:10 p.m. OAH, however, issued the undersigned's order on October 21, 2015, at 2:13 p.m., prior to receipt of District's opposition. District argues that its opposition was timely filed and issuance of the Order of Reconsideration without consideration of District's opposition is a denial of District's due process rights. In an abundance of caution, District's Motion for Reconsideration of Student's Motion for

Reconsideration of the Stay Put Order dated September 30, 2015 is granted. District's Opposition to Student's Request for Reconsideration, filed by District on October 21, 2015, and is fully considered in the following discussion and order.

RECONSIDERATION OF SEPTEMBER 30, 2015 STAY PUT ORDER

A motion for stay put functions as an automatic preliminary injunction. (*Joshua A. v. Rocklin Unified Sch. Dist.* (559 F.3d 1036, 1037 (9th Cir. 2009).) A student who requests an administrative due process hearing is entitled to remain in his last agreed upon and implemented educational placement regardless of the strength or likelihood he will be harmed by a change in placement. (*A.D. ex rel. L.D. v. Hawaii Dep't. of Educ.*, (727 F. 3d 911, 914 (9th Cir. 2013).)

Student cites a recent holding in *D.G. ex rel P.G. v. San Diego Unified School District*, (*D.G. ex re. P.G.*) 2015 WL 5672354, which was not available at the time of the original motion. In *D.G. ex rel P.G.*, the United States District Court for the Southern District of California held in September 2015, that an ALJ had erred in denying a Student's motion for stay put. The court issued injunctive relief granting Student's requested stay put placement. In doing so, the court determined that the protections under *Ms. S. ex rel G. v. Vashon Island Sch. Dist. (Vashon Island)* (9th Cir. 2003) 337 F. 3rd 1115, 1134.) do not depend upon a mid-year transfer between school districts, but rather are invoked upon any dispute regarding appropriate placement upon transfer, and are dependent only upon feasibility of the school district continuing to provide the last agreed upon placement.

District contends Student's Motion for Reconsideration is untimely and should not be considered. As District pointed out in his argument, there is no provision in special education regarding reconsideration of orders issued by administrative law judges. The undersigned ALJ does not find 13 days from issuance to order to filing of reconsideration request to be an unreasonable period of time for development of a request for reconsideration considering the recency of the *D.G. ex re. P.G.* holding.

District next contends that Student's request for reconsideration is not based on new of different facts, circumstances, or law. District contends the "new and additional authorities" presented by Student in *D.G. ex rel P.G* does not represent new authority, as the federal court decision was issued September 21, 2015, prior to the filing of Student's original Motion for Stay Put filed on September 22, 2015. The irony of this argument is noted. District's argument is, at best, impractical. It is unlikely that any one, other than the percipient parties of *D.G. ex rel P.G.*, were aware of this ruling within five days, let alone 24 hours of its issuance by the federal court. In any event, the undersigned ALJ was unaware of the federal court's directive, which is relevant and should have been considered in determining Student's stay put.

District contends Student's Motion for Reconsideration should be denied because the authority cited by Student does not apply in this matter. To the contrary, *D.G. ex rel P.G* is

directly on point, and provided injunctive relief from similar prior OAH stay put rulings which were considered in determining the September 30, 2015 Order in this matter.

District repeats its argument that Student's case is distinguished from *Vashon Island* (and therefore *D.G. ex rel P.G.*) as it does not involve a mid-year transfer or a temporary placement. The argument is not convincing. *D.G. ex rel P.G.* is an appropriate analogy to Student's case. Student's placement in his non-public school has been part of his individualized education plan for five years, since the second grade. Student did not age out of his non-public placement, nor did he move from his existing residence. He merely aged out of the elementary school district. Upon completion of the sixth grade, Student transitioned to District. District offered Student placement in a special day class in a public school. Parents dispute the adequacy of the special day class placement, and filed this request for due process hearing on Student's behalf. But for the timing of Student's transition to District, i.e., had Student's complaint disputed a mid-year transfer and placement, the ruling under *Vashon Island* clearly would have been applicable. The court, in *D.G. ex re. P.G.*, rejected the contention that the transfer of a student to another educational agency causes the status quo underlying the "stay put" provision to no longer exist. Further, there is no evidence or argument that District cannot feasibly implement Student's last agreed upon and implemented individualized education program in the non-public school setting at Speech and Language Development Center, pending determination of this matter.

The ruling under *D.G. ex rel P.G.* supports *Vashon Island* and applies it to *all* stay put disputes regardless of whether they occur during end of school year transitions from elementary school districts to high school districts. As stated in *D.G. ex rel P.G.*, (*citing A.D. ex rel. L. D.*, 727 F. 3d. at 916), the goal of the right to "stay put" is to protect students from changes to their educational programs when there is a dispute over the lawfulness of the change. This would be subverted if the new school district's interim services were deemed the student's "then current placement."

Accordingly, Student's Motion for Stay Put remains granted as previously ordered on October 21, 2015. Student's stay put placement and services remain at Speech and Language Development Center as implemented in Student's September 26, 2014 individualized education program.

IT IS SO ORDERED.

DATE: November 09, 2015

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings