

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2018110769

AMENDED ORDER GRANTING
REQUEST FOR RECONSIDERATION;
DENYING MOTION FOR STAY PUT

On November 21, 2018, Parent on behalf of Student filed with the Office of Administrative Hearings a request for due process hearing, naming Los Angeles Unified School District. On December 27, 2018, the undersigned Administrative Law Judge granted Student's Motion for Stay Put. On March 7, 2019, Los Angeles filed a Motion for Reconsideration, accompanied by sworn declarations. Student opposed the motion.¹

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. (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

Los Angeles alleges new facts and circumstances in support of its request for reconsideration. Los Angeles does not dispute that Student's last agreed upon and implemented placement is Beacon Day School, a nonpublic school, per Student's individualized education program dated January 23, 2018. Rather, Los Angeles alleges that, since OAH's December 27, 2018 order for Los Angeles to provide Student's stay put placement at Beacon, Beacon's conduct has made compliance with the order impossible or impracticable.

On January 9, 2019, upon receiving OAH's stay put order and following the winter break, Los Angeles promptly contacted Beacon to attempt to readmit Student. Beacon did not respond. On January 11, 2019, Los Angeles contacted Student's attorney to discuss

¹ Student submitted an opposition after 5:00 p.m. on March 12, 2019, which was not considered in OAH's original order granting reconsideration and denying stay put. The opposition is considered herein, which forms the basis of the Amended Order.

reimbursement for Student's placement at Beacon, but Student did not agree to reimbursement. On January 17, 2019, Los Angeles contacted attorneys for Beacon and Student in another attempt to comply with OAH's stay put order. Student and Beacon did not respond. On January 25, 2019, Los Angeles informed Beacon's attorney that it would fund Student's placement at Beacon outside of a master contract and requested for Beacon to re-enroll Student. Beacon refused to re-enroll Student outside of a master contract. On February 13, 2019, Los Angeles agreed to a master contract with Beacon. However, by letter on March 1, 2019, Beacon informed Los Angeles it would not readmit Student.

Student's opposition, accompanied by a declaration from Student's attorney, states that on March 12, 2019, Beacon's attorney informed Student's attorney that it was possible to readmit Student if the master contract was again renegotiated. Student's argument that Los Angeles' request for reconsideration should therefore be denied is unpersuasive, as the opposition confirms that new facts and circumstances exist.

Accordingly, the alleged facts and circumstances arose after OAH's December 2018 order and Los Angeles' request for reconsideration is therefore granted.

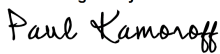
Stay Put

On reconsideration, the facts alleged indicate that it is impossible or impracticable for Los Angeles to provide Student's stay put placement at Beacon. A student is not entitled to the identical services pursuant to his or her IEP when those services are no longer possible or practicable. (*Ms. S. v. Vashon Island* (9th Cir. 2003) 337 F.3d 1115, 1133-1134.) When a student's "current educational placement" becomes unavailable, the local educational agency must provide the student with a similar placement in the interim. (*See Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533.) In light of Beacon's non-cooperation with Los Angeles' attempts to secure Student's stay put placement there, Student's motion for stay put is denied.

ORDER

1. Los Angeles' Motion for Reconsideration is granted.
2. Based on reconsideration of new facts and circumstances, Student's Motion for Stay Put is denied.
3. Los Angeles shall provide Student a placement that is similar to Beacon during the pendency of the due process hearing for this matter.

DATE: March 13, 2019

DocuSigned by:

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PAUL H KAMOROFF
Administrative Law Judge
Office of Administrative Hearings

