

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021080419

ORDER GRANTING MOTION FOR RECONSIDERATION
AND GRANTING MOTION FOR STAY PUT

AUGUST 24, 2021

On August 16, 2021, Student filed a Motion for Stay Put. On August 20, 2021, Los Angeles Unified filed notice of non-opposition to Student's Motion for Stay Put. On August 20, 2021, the undersigned administrative law judge denied Student's Motion for Stay Put without prejudice on the ground that the Motion for Stay Put was moot because of Los Angeles Unified's non-opposition. On August 24, 2021, Student filed a Motion for Reconsideration. No response was required or received from Los Angeles Unified.

MOTION FOR RECONSIDERATION

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 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.)

Here, Student seeks reconsideration asserting that without an express order from OAH establishing Student's stay put, Student could not be assured that Los Angeles Unified would implement Student's last agreed upon and implemented individualized education program, called IEP.

The Motion for Reconsideration included the evidence originally submitted with the Motion for Stay Put, and a declaration dated August 23, 2021, establishing new facts. Specifically, Student matriculated from middle school to high school at the beginning of the 2021-2022 school year. Despite Los Angeles Unified's August 20, 2021 non-opposition to Student's Stay Put Motion, after Student enrolled at Chatsworth High School on August 16 2021, a school administrator informed Student's parents and adult sister that the high school would not provide the one to one behavior intervention implementation services required by Student's February 10, 2021 IEP. As August 23, 2021, Student had not yet received the behavior services.

The August 23, 2021 declaration is sufficient to establish a basis for reconsideration. Therefore, Student's Motion for Reconsideration is granted.

MOTION 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); 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.)

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).)

Courts have recognized, however, 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).) When a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances. (*R.F. Frankel v. Delano Union School District*, (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing*, *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

Student seeks stay put to ensure that Los Angeles Unified continues to implement Student’s last agreed upon and implemented February 10, 2021 IEP, which in relevant part includes behavioral services in the form of one to one behavior

intervention implementation for 1950 minutes a week. Student's Motion for Stay Put is granted. Student's stay put shall be the placement, services, accommodations and supports in the February 10, 2021 IEP, including 1950 minutes of one to one behavior intervention implementation services, taking into consideration matriculation from grade to grade, unless otherwise ordered or agreed upon between Student and Los Angeles Unified.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings