

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CABRILLO POINT ACADEMY.
OAH CASE NUMBER 2021110066

ORDER GRANTING REQUEST FOR RECONSIDERATION
AND AFFIRMING AND MODIFYING PRIOR ORDER

NOVEMBER 16, 2021

On November 8, 2021, the undersigned Administrative Law Judge issued an Order Granting Motion for Stay Put. On November 10, 2021, Student filed a Motion for Reconsideration on the grounds he believes his stay put placement is independent study through Cabrillo Point Academy and not a non-public school. Cabrillo Point Academy filed an opposition on November 12, 2021. Student filed a reply to Cabrillo Point Academy's opposition on November 15, 2021.

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, 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.)

DISCUSSION

Student contends that the Mardan School did not accept Student for admission, and further that the November 8, 2021 Stay Put Order did not include all the related services to which Student is entitled under his last agreed upon and implemented individualized education program, IEP. Student submitted a declaration by Parent and Parents' advocate in support of these facts. These constitute new facts and evidence warranting reconsideration of the motion. Accordingly, Student's motion for reconsideration is granted.

Student argues, as he did in his original motion, that his stay put placement is independent study through Cabrillo Point Academy, together with the related services contained in his April 26, 2021 IEP. Student now submits the sworn declaration of Parent and Parents' advocate that he was not accepted to Mardan School, and that Mardan School cannot be the last agreed upon and implemented placement under Student's IEP.

As stated in the prior order, Student's stay put placement is a non-public school as agreed to by the parties in the September 28, 2021 settlement agreement. The

settlement agreement states, "Cabrillo Point shall amend Student's April 26, 2021 annual IEP within five (5) business days of the full execution of this Agreement to provide for placement at a mutually agreeable non-public school. This amended IEP shall constitute Student's stay put placement."

Student's original stay put motion contains several emails agreeing to placement at the Mardan School. Parent's October 27, 2021 email confirms Student would attend the Mardan School the following day, October 28, 2021. Although Student's motion for reconsideration contends he was not accepted by the Mardan School, the declarations and documents submitted by both Student and Cabrillo Point Academy establish the Mardan School accepted Student, but Parents declined to enroll Student because Mardan would not accommodate Parents' request for Student to participate in independent study during the family's extended trip between November 19, 2021 through January 4, 2022, which amounts to approximately nineteen instructional days. Mardan School was the last agreed upon and implemented placement under Student's IEP.

The California Legislature defines truancy in precise language. A pupil subject to compulsory full-time education who is absent from school without a valid excuse three full days in one school year or tardy or absent for more than a 30-minute period during the school day without a valid excuse on three occasions in one school year, or any combination thereof, shall be classified as a truant and shall be reported to the attendance supervisor or to the superintendent of the school district. (Ed. Code, § 48260.) Education Code sections 48205 and 48225.5 set forth the reasons for which a pupil may be excused from school. These provisions emphasize the importance of school attendance and are intended to help minimize interference with a student's instruction.

Student's stay put placement is the Mardan School, together with the related services contained in Student's April 26, 2021 IEP, as amended by the September 28, 2021 settlement agreement. Parents cannot change the terms of the last agreed upon and implemented IEP by attempting to renegotiate the attendance policies or insist that the Mardan School offer Student independent study as a condition of Student's attendance.

Student's motion for reconsideration clarified that Student's April 26, 2021 IEP provided Student sixty minutes weekly consultation between Parent and a Board-Certified Behavior Analyst and sixty minutes weekly specialized academic instruction. These services are included in Student's stay put placement.

The remaining issues raised in Student's motion for reconsideration are not the proper subject of a stay put motion and may be raised in the due process hearing in this matter, at the discretion of the Administrative Law Judge.

ORDER

1. Student's motion for reconsideration is granted.
2. OAH's November 8, 2021 Stay Put Order is affirmed and modified.

Student's stay put placement during the pendency of this action is at the Mardan School, with the following: mileage reimbursement in an amount not to exceed one round trip per school day at the current IRS rate; 60 minutes weekly consultation between Parent and a Board-Certified Behavior Analyst; sixty minutes weekly specialized academic instruction; 60 minutes weekly individual speech and language services; 30 minutes weekly group speech and language services; 120 minutes weekly individual occupational therapy services; and Extended School Year with

sixty minutes individual language and speech services, thirty minutes group language and speech services and sixty minutes individual occupational therapy services.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings