BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

UKIAH UNIFIED SCHOOL DISTRICT AND

HEALDSBURG UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021040310

ORDER DENYING UKIAH UNIFIED SCHOOL DISTRICT'S REQUEST FOR RECONSIDERATION

JUNE 1, 2021

On April 20, 2021, the undersigned Administrative Law Judge issued an order granting Student's Motion for Stay Put allowing Student to remain in Mother's unilateral placement in a residential treatment center pursuant to a Superior Court Order. On April 26, 2021, Ukiah Unified School District filed a Motion for Reconsideration of the Order Granting Stay Put. On April 28, 2021, Student filed an opposition. On April 29, 2021, Ukiah Unified filed a Reply to Opposition.

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

Ukiah Unified's April 9, 2021 Opposition Student's Motion for Stay Put presented the arguments that Student was not entitled to stay put in her requested program because (1) the Request for Stay Put was a request or a change in placement; and (2) Student was improperly attempting to resolve a factual dispute through the stay put process. In its Request for Reconsideration, Ukiah Unified offers no new facts, circumstances or law to support reconsideration. Instead, Ukiah Unified Request for Reconsideration presents three arguments, none of which are relevant to the validity of the April 21, 2021 Order Granting Stay Put.

First, Ukiah Unified argues the ALJ relied upon incorrect facts. Ukiah Unified's initial Opposition to Student's Request for Stay Put, consisted of 305 pages of hearing-related documents, while ironically arguing Student sought a pre-hearing resolution of a factual dispute central to Student's issues in her complaint. The ALJ expressly avoided factual determinations regarding the validity of the various IEP documents or the Superior Court child custody orders in determining Student's stay put placement. Therefore, Ukiah Unified's submission of additional documents in its possession but not initially provided do

not constitute new facts or circumstances. Ukiah Unified's explanation for the omission is simply that the documents did not appear relevant to the question of stay put. These newly proffered documents require a determination of disputed facts which Ukiah Unified initially contended were improper, yet now seeks to validate. The Order Granting Stay Put expressly stated there was no requirement that OAH make a factual determination of Student's last implemented IEP to determine Student's stay put placement, nor was a determination made. Ukiah Unified's arguments present nothing new.

Secondly, Ukiah Unified contends the ALJ erroneously relied on *Sam K. ex. Rel. Diane C. v. Hawaii Dept. of Educ.* (9th Cir. 2015) 755 F.3d 1033). Student clearly argued *Sam K.* in support of her Request for Stay Put. Ukiah Unified failed to address Student's contentions in its Opposition to Stay Put and instead relied on its other arguments. Raising *Sam K.* at point does not constitute new law, nor does the ALJ agree with Ukiah Unified's contention that *Sam K.* has been misinterpreted. While Stay Put *may* be determined by a student's last implemented IEP, the statute does not require it. Thusly, while *Sam K.* does not involve stay put, its findings nevertheless parallel and support Student's contentions.

More importantly, *Sam K.* was not the basis for the determination of Stay Put. Even eliminating reference or reliance on Sam K., Ukiah Unified failed to address the actual determining factors in granting Student' Request for Stay Put. Specifically, the primary purpose of stay put is to protect students from changes to their educational programs when there is a dispute over the lawfulness of the changes. (*A.D. ex rel. A.D. v. Hawaii Dep't. of Educ.* (9th Cir. 2013) 727 F.3d 911, 914.) Using this standard, Student's current placement was a residential treatment facility and had remained Student's placement for over one year. If a dispute arises before an IEP is implemented, the current educational placement is the operative placement under which the child is

actually receiving instruction at the time the dispute arises. (See *Thomas v. Cincinnati Bd. of Educ*. (6th Cir. 1990) 918,F2d 618.) Thusly, Student's stay put placement is the residential treatment placement.

Thirdly, Ukiah Unified argues that the Order Granting Stay Put against public policy based upon the projected cost of the residential treatment placement. Ukiah Unified argues that Student could potentially remain in this placement throughout the pendency of this matter, a period of three-to-five years at a cost of $601,230.00 in public funds. Determination of outcome at hearing, let alone on appeal, is speculative and without merit. Ukiah Unified contends the school district is being unfairly punished yet Ukiah Unified failed to file its own due process complaint when the disputed placement initially appeared in September 2020. It is equally unfair to punish a student in a precarious situation without an IEP, which is why case law provides for a non-traditional determination of stay put. In this case, Student's current educational placement is remained the operative placement under which she was actually receiving instruction at the time the dispute arose and remains her currently stay put placement.

Ukiah Unified School District has not established the April 20, 2021 Order should be reconsidered. The motion for reconsideration is denied.

IT IS SO ORDERED.

Judith Pasewark

Judith Pasewark
Administrative Law Judge
Office of Administrative Hearings