BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CHINO VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017090155 ORDER GRANTING MOTION FOR RECONSIDERATION OF STUDENT'S MOTION FOR STAY PUT; AFFIRMING ORDER DENYING MOTION FOR STAY PUT; AND DENYING MOTION TO SET ASIDE ORDER DENYING STAY PUT

On September 25, 2017, the undersigned administrative law judge issued an order denying Student's Motion for Stay Put. On October 26, 2017, Chino Valley Unified School District (District) filed a Supplemental Declaration of Anne Ingulsrud in Support of District's Opposition to Student's Motion for Stay Put, after Student's Motion for Stay Put had already been denied. District filed its Supplemental Declaration for the purpose of clarifying the Declaration of Anne Ingulsrud dated September 12, 2017, which District filed in support of its initial Opposition to Student's Motion for Stay Put. District attached to Ms. Ingulsrud's Supplemental Declaration a Memorandum of Understanding between Ontario-Montclair School District (OMSD)[1] and the West End SELPA (WESELPA)[2] dated April 28, 2017 (the MOU).

On November 3, 2017, Student filed a Motion for Reconsideration of Student's Motion for Stay Put or Motion to Set Aside Order Denying Stay Put. On November 8, 2017, District filed an Opposition to the Motion for Reconsideration of Student's Motion for Stay Put or Motion to Set Aside Order Denying Stay Put. On November 9, 2017, Student filed a Reply to District's Opposition to Motion for Reconsideration of Student's Motion for Stay Put or Motion to Set Aside Order Denying Stay Put.

[1] OMSD provides the Orthopedic Impaired Preschool Program at Moreno School, which Student attended in the 2016-2017 school year. OMSD previously was a member of the WESELPA, but exited it at the end of the 2016-2017 school year to form its own special education local plan area.

[2] District is a member of the WESELPA.

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. (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

Motion for Reconsideration

Here, Student's Motion for Reconsideration is based upon Student's contention that reconsideration of Student's Motion for Stay Put is justified because Student discovered new relevant information in the MOU after Student's motion for stay put was denied.[3] Student obtained the MOU shortly after October 20, 2017, pursuant to OMSD's response to Student's public records request. Student's Motion for Reconsideration of Student's Motion for Stay Put is justified because the MOU was not before OAH when Student's Motion for Stay Put was initially denied on September 25, 2017. Accordingly, Student's Motion for Reconsideration is granted.

Reconsideration of Motion for Stay Put

Student argues that, pursuant to the terms of the MOU, District may place Student in the orthopedic impairment program operated by OMSD at Moreno School, even though OMSD is no longer a member of the WESELPA. However, the MOU does not allow members of the WESELPA to unilaterally and unconditionally place their students in OMSD's special education programs. The MOU expressly states multiple conditions which must be satisfied before a member of the WESELPA may offer a student a placement in an OMSD program, including OMSD's agreement to such placement. Because the MOU precludes District from unilaterally and unconditionally placing its students in OMSD's special education programs, Student's argument that the orthopedic impairment program operated by OMSD at Moreno School is available to Student as stay put during the pendency of this action is inaccurate. Therefore, after reconsideration, Student's Motion for Stay Put is denied. Accordingly, OAH's order dated September 25, 2017, denying Student's Motion for Stay Put is affirmed.

[3] Student's attorney served a request for public records on OMSD on October 13, 2017 and a second identical request for public records on WESELPA on October 16, 2017.

Motion to Set Aside Order

Student argues that OAH's order denying Student's Motion for Stay Put should be set aside because it was a mistake, inadvertence, or excusable neglect on the ALJ's part to find that Student had failed to establish that the program which District offered to Student at the Walnut Avenue Elementary School preschool moderate-to-severe class as stay put was not comparable to Student's former placement in the Orthopedic Impairment Preschool Program at Moreno School. Student's arguments go to the merits of the case. For the reasons discussed above, OAH's Order denying Student's request for stay put at OMSD was affirmed. Therefore, Student's Motion to Set Aside the Order Denying Stay put is denied on the same grounds.

ORDER

1. Student's Motion for Reconsideration of Student's Motion for Stay Put is granted.

2. After reconsideration, Student's Motion for Stay Put is again denied and the Order Denying Motion for Stay Put issued by OAH on September 25, 2017, is hereby affirmed.

3. Student's Motion to Set Aside Order Denying Stay Put is denied.

IT IS SO ORDERED.

DATE: November 27, 2017

DocuSigned by:
Christine Arden
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CHRISTINE ARDEN
Administrative Law Judge
Office of Administrative Hearings