BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018060471 ORDER DENYING REQUEST FOR RECONSIDERATION

On July 23, 2018, the undersigned Administrative Law Judge issued an order granting Student's motion for stay put and ordered Student's stay put placement at a non-public school, Junior Blind/Wayfinder, pursuant to Student's May 4, 2017 individualized education program.

On September 7, 2018, the undersigned ALJ issued an order granting Saddleback Valley Unified School District's motion for reconsideration and designated Student's stay put placement as Ocean View nonpublic school with implementation of the program and services identified in Student's May 4, 2017 IEP, replicated, as closely as possible.

On September 20, 2018, Student filed a motion for reconsideration of the September 7, 2018 Order. On September 21, 2018, Saddleback filed an opposition to the motion. Student filed a reply brief on September 24, 2018.

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.)

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)[1]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program, which has been implemented 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 because of changing circumstances, 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 (*Vashon Island*), superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F.Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.].)

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028 (*Knight*); *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Bd. of Ed.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.)

A student is not entitled to the identical services pursuant to his or her IEP when those services are no longer possible or practicable. (*Vashon Island*, 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 pending due process. (*See Knight*, 877 F.2d 1025, 1028.)

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

PROCEDURAL BACKGROUND

On July 23, 2018, the undersigned ALJ issued an order granting Student's motion for stay put, identifying Wayfinder nonpublic school as the placement last agreed upon and implemented before Student filed his due process complaint. Student's stay put IEP, dated May 4, 2017, offered placement at a nonpublic school, in a special day class for 314 minutes per school day, with specialized vision services for 90 minutes weekly; small group speech and language for 60 minutes weekly; individual occupational therapy for 45 minutes weekly; and orientation and mobility services for 30 minutes weekly.[2]

On September 7, 2018, the undersigned ALJ issued an order granting Saddleback's motion for reconsideration of the July 23, 2018 stay put order based upon changed circumstances. Specifically, Saddleback submitted California Department of Education's August 15, 2018 amended conditional certification of Wayfinder, demonstrating that Wayfinder was not certified to provide special education to students with visual impairment as their primary disability or to provide related vision services.

In opposition to the underlying motion for stay put and in its motion for reconsideration, Saddleback demonstrated that Ocean View, a nonpublic school, could provide Student with a placement and services comparable to those identified in Student's stay put IEP. Ocean View agreed to provide speech and language and occupational therapy related services. Saddleback agreed to provide orientation and mobility and specialized vision services to Student on the Ocean View campus, and could do so because of the geographic proximity between Ocean View and Saddleback.

DISCUSSION

Student's motion seeks reconsideration of the undersigned ALJ's September 7, 2018 order designating Student's stay put placement at Ocean View nonpublic school, with implementation of the program and services identified in his stay put IEP, replicated as closely as possible.

Student contends new facts exist, specifically, that on September 10, 2018, California Department of Education issued an amended conditional certification authorizing Wayfinder to provide related vision services. As part of his motion, Student produced a letter dated August 24, 2018, "To Whom it May Concern," wherein Wayfinder was seeking personnel who could teach students with visual impairments. Student has not presented evidence that Wayfinder currently employs a vision impairment specialist who can provide related vision services to Student.

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[2] Under the stay put IEP, a visual impairment specialist would address Student's goals in writing and learning to read in Braille.

Even if he had, such circumstances would not, of themselves, justify reverting back to placement at Wayfinder. Here, Wayfinder's August 15, 2018 change in certification constituted a change in circumstances, making Student's educational placement unavailable. Once Saddleback identified a nonpublic school placement and services replicating Student's stay put IEP, as closely as possible, that became Student's new educational status quo.

The objective of stay put cannot be fulfilled by changing Student's stay put placement with every amended conditional certification, which either supports or contraindicates placement at Wayfinder. Stay put acts to maintain stability and continuity for children pending resolution of disputes about their placement and services.

Student has not identified any new facts, circumstances, or law that would justify reconsideration of the September 7, 2018 stay put order.

Accordingly, Student's request for reconsideration is denied.

IT IS SO ORDERED.

DATE: October 08, 2018

DocuSigned by:

COLE DALTON
Administrative Law Judge
Office of Administrative Hearings