BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016110308
v.	ORDER ON RECONSIDERATION. PARTIALLY GRANTING AND PARTIALLY DENYING MOTION FOR STAY PUT
GROSSMONT UNION HIGH SCHOOL DISTRICT.	

On November 7, 2016, Student filed with the Office of Administrative Hearings a request for Due Process Hearing, naming Grossmont Union High School District and Excelsior Academy, a nonpublic school.[1] On November 7, 2016, Student made a motion for stay-put, arguing that her stay-put placement was that particular nonpublic school, Excelsior Academy.

On November 14, 2016, District opposed the motion for stay put, arguing that Student's last agreed upon and implemented individualized education program had provided for placement at a nonpublic school, that Student had been placed at Excelsior, but that Excelsior was entitled to, and had given 20-days' notice of the cancellation of its individual services agreement for service to Student. The document attached to District's opposition was a notice from Excelsior to District dated October 25, 2016 that purported to terminate Student's services on November 10, 2016,

On November 22, 2016, OAH issued an Order granting stay put, based on improper notice. Specifically, the document dated October 25, 2016 purported to terminate services on November 10, 2016, thus providing less than the required 20 days' notice. The Order stated that it was without prejudice to Excelsior giving the proper notice.

On November 30, 2016, Excelsior provided further documentation. The further documentation indicates that on October 25 and 26, 2016, multiple documents were sent, including the document from Excelsior to District that purported to terminate Student's service on November 10, 2016. However, Excelsior provided a different document that was sent directly to Student dated October 26, 2016, which properly gave 20-day notice, and stated a termination date on the twentieth day of November 14, 2016 rather than November 10.

[1] Excelsior is dismissed from this matter by a separate Order, for lack of OAH jurisdiction over nonpublic schools.

APPLICABLE LAW

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 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); 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 changed circumstances, the status quo cannot always be replicated exactly for purposes of stay put. For example, 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 v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].) Further, a student is not entitled to the identical placement location or services pursuant to his or her IEP when that location or those services are no longer possible or practicable. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) When a student's "current educational placement" becomes unavailable, the local educational agency must provide the student with a similar placement in the interim. (*See Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533.)

Education Code, section 56366, subdivision (a)(4), provides that when an individual Student is placed at a nonpublic school pursuant to a master contract between the nonpublic school and the Student's public school district, the nonpublic school shall give 20 days' notice before terminating the individual services agreement .

DISCUSSION

Further documentation indicates that Student was notified on October 26, 2016, that Excelsior's services would be terminated on the twentieth day thereafter, on November 14, 2014. Accordingly, Student's motion for stay put seeking placement at Excelsior is reconsidered on the basis of new information, and on reconsideration is denied. Excelsior is no longer available. When a student's "current educational placement" becomes unavailable, the local educational agency must provide the student with a similar placement in the interim, and to that extent only, the motion for stay put is granted.

ORDER

1. The motion for reconsideration is granted.

2. Student's motion for stay put at a particular non-public school, Excelsior, is denied.

3. District must provide Student with a similar placement in the interim.

DATE: December 8, 2016

DocuSigned by:
June Lehrman
[illegible]

JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings