BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

V.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019101175

ORDER DENYING REQUEST FOR RECONSIDERATION

On November 12, 2019, the undersigned Administrative Law Judge issued an order granting Student's motion for stay put. On November 19, 2019, Long Beach Unified School District filed a motion for reconsideration and a declaration in support of the motion. On November 20, 2019, Parent on Behalf of Student filed an opposition.

APPLICABLE LAW

The Office of Administrative Hearings, called 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, 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.)

Long Beach timely filed its motion for reconsideration within 10 days of the order granting stay put. However, Long Beach failed to sufficiently explain why it did not

previously respond to Student's motion for stay put, e.g. its argument for different facts, circumstances, or law.

Student filed a motion for stay put, with supporting documentation, on October 29, 2019. The motion was filed separately from Student's complaint and was properly served on Long Beach, with a proof of service declaring lawful service. Despite proper service, Long Beach argues its counsel was unaware of the motion until November 8, 2019. Long Beach therefore failed to submit an opposition by November 12, 2019, when OAH granted Student's motion. Given Student's proper service, Long Beach's argument that it did not have sufficient time to respond to the motion is not reasonable. Long Beach's request for reconsideration is therefore denied.

In addition, Long Beach erroneously argues that OAH should reverse its order because of perceived polices that OAH does not order transportation. Long Beach overlooks that stay put is used to preserve the status quo during the pendency of a due process hearing. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) For purposes of stay put, the current educational placement is typically the last agreed upon and implemented individualized educational program, called IEP, placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) Stay put includes related services agreed upon in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).) Related services are:

> transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the

> individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) . . . .

(20 U.S.C. § 1401(26)(A).) State law adopts this definition of related services, which are called "designated instruction and services." (Ed. Code, § 56363, subd. (a).)

Consequently, OAH has the authority to order transportation, when appropriate.

Student's motion and supporting documentation established that Student's last agreed upon and implemented IEP included special education transportation as a related service. Student also established that Long beach unilaterally terminated that service during the pendency of this matter. Long Beach does not dispute these facts or circumstances. Student is entitled to stay put, including related services, during the pendency of this matter. Accordingly, Student's motion for stay put was properly granted.

ORDER

Long Beach failed to establish that OAH's November 12, 2019 Order Granting Stay Put should be reconsidered. The motion for reconsideration is denied. All dates set in this matter are confirmed.

IT IS SO ORDERED.

DATED: November 21, 2019

DocuSigned by:
Paul H. Kamoroff
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Paul H. Kamoroff
Administrative Law Judge
Office of Administrative Hearings