BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

DEL MAR UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2020090236

ORDER GRANTING REQUEST FOR RECONSIDERATION

OCTOBER 1, 2020

On September 21, 2020, the undersigned Administrative Law Judge issued an order denying Student's motion for stay put and request to be placed in the 5th grade in-person general education cohort as his stay put placement. On September 24, 2020, Student filed a motion for reconsideration. On September 29, 2020, Del Mar Unified School District filed an 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

Student offers new facts, circumstances or law to support reconsideration. A new fact stated by both parties indicates that Student's annual IEP team meeting was held on September 22, 2020, the day after the order denying Student's motion for stay put was issued. At that meeting Parent consented to the IEP dated September 23, 2019 which specified Student's program as 51% in the general education setting and 49% outside the general education setting. Parent signed consent to this change in placement on September 21, 2020. The change in Student's placement increased his time spent in the general education classroom by 10%. Under the new IEP, Student is to spend a majority of time in the general education setting.

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).) The parties' agreement increased Student's time in the general education class to a majority of the time. Parent's consent to the IEP on September 21, 2020 is interpreted as an "agreement otherwise," which in this case alters his stay put placement.

The shift in the percentage of the time Student's IEP calls for him to be in a general education setting changes the reasonableness of placing Student in a cohort of exclusively Student's with IEPs. Student also established that the general education cohort also includes Students with IEP's. Student's placement at the time the dispute arose included a bled of time with both typically developing and students with special

needs. The shift to the general education cohort, that includes some other children with special needs, more closely approximates Student's placement at the time the dispute arose.

In light of the forgoing, Student shall be placed in the 5th grade general education cohort for in-person learning for purposes of stay put. Specifically, the agreement of the parties on September 21, 2020, reflects that Student spend a majority of time in the general education setting. Under the facts of this case, this constitutes an agreement otherwise between the parties regarding Student's stay put placement.

Nothing in this order prevents Del Mar from enforcing a legal quarantine period indicated in the guidelines issued by the California Department of Public Health or the County of San Diego Public Health Services prior to transferring Student to the general education cohort. Whatever requirements imposed on all students may be imposed before Student moves to the general education cohort.

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ORDER

1. Student's motion for reconsideration is GRANTED.

2. On reconsideration, Student's motion to be placed in the 5th grade in-person general education cohort is granted.

3. All dates set in this matter are confirmed.

IT IS SO ORDERED.

DocuSigned by:
Marlo Nisperos
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Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings