BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ALHAMBRA UNIFIED SCHOOL DISTRICT AND PASADENA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016120951 ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING STAY PUT

On December 28, 2016, the undersigned administrative law judge issued an order that denied Student's motion for stay put. On January 3, 2017, Student filed a motion for reconsideration. Neither Alhambra Unified School District nor Pasadena Unified School District filed a response.

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.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement.

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

(*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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).)

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old IEP as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, 20 U.S.C. § 1414(d)(1)(B).)

DISCUSSION

Reconsideration

Student contends that the undersigned ALJ misread the date of the IEP as November 9, 2016, rather than November 9, 2015, which is correct. Student also submitted a copy of the settlement agreement with Alhambra that prompted the October 31, 2016 amendment to the November 9, 2015 IEP. These constitute new facts and evidence warranting reconsideration of the motion. Accordingly, Student's motion for reconsideration is granted.

Motion for Stay Put

Student's complaint alleges that she was a foster child and resident of a licensed children's institution in Alhambra on October 31, 2016. On that day, Alhambra prepared an amendment to Student's November 9, 2015 IEP in compliance with a settlement agreement that resolved a prior due process complaint filed by Student against Alhambra. The amendment, consented to by the holder of Student's educational rights on November 1, 2016, offered Student placement and services in a named residential treatment center in Utah. Student's complaint further alleges that the settlement agreement provided that Alhambra would fund 30 days of the Utah placement and transportation to Utah. Student contends that when Alhambra transported her to Utah on November 21, 2016, she was no longer a resident of Alhambra and homeless, and that the school district responsible for funding the placement from that date forward was Pasadena, the district in which her educational rights holder resides.

Student's complaint alleges that despite demands to Pasadena on December 12 and 15, 2016 to fund Student's residential placement, Pasadena did not respond. Student alleges that she requested in writing to be enrolled in Pasadena on December 16, 2016, again without response. Student currently seeks a determination by OAH of which school district is

responsible for funding her out-of-state residential placement, pursuant to the last agreed upon and implemented IEP of October 31, 2016. Student moves for a stay put order that Alhambra or Pasadena fund the out-of-state residential placement until resolution of this due process proceeding.

Student was a foster youth placed in a licensed children's institution at the time of the October 31, 2016 IEP. (Ed. Code §§ 48204, subd. (a)(1)(B) and 56155.) Once enrolled in a school district, a foster youth is entitled to remain the responsibility of his or her school of origin. (Ed. Code § 48853.5.) Here, Student contends in her moving papers that the IEP's placement of her in in Utah rendered her homeless in California. The education code provides protection for foster youth against such results as, at the point of any change or subsequent change in residence once a child becomes a homeless child, the local educational agency servicing the homeless child shall allow the homeless child to continue his or her education in the school district of origin throughout the duration of homelessness. (Ed. Code § 48852.7(a).) Accordingly, as Alhambra offered Student a FAPE by placing her in a residential placement in another State, which resulted in Student's removal from a licensed children's facility and rendered her homeless, Alhambra remains Student's district of origin and continues to be responsible for providing Student with a FAPE and funding the program offered in the October 31, 2016 IEP. [2]

The October 31, 2016 IEP amendment expressly indicates that Alhambra's offer of placement and services makes changes to Student's educational program in accordance with a settlement agreement. That IEP offers the Utah placement and related services, with transportation to Utah. The settlement agreement, submitted with the motion for reconsideration, includes a waiver and release by Student of future claims only as to those issues raised in the prior due process proceeding, and not the issue of future responsibility for provision of a FAPE to Student. On this new evidence, funding for the out-of-state placement after the first 30 days is not addressed, and Student has not waived any claims that Alhambra must continue to fund the Utah placement. Accordingly, the settlement agreement does not limit or bar Alhambra's continued responsibility for funding of Student's out-of-state placement.

Generally, the California agency responsible for funding a special education student's education at an out-of-state residential facility is the school district in which the student's parent, or in this case the educational rights holder, resides, which allegedly became Pasadena in this case. (See *Orange County Dept. of Educ. v. California Dept. of Educ., et al.* (9th Cir. 2011) 668 F.3d 1052, 1053.) However, Student did not request enrollment in Pasadena until December 16, 2016, almost a month after Student's alleged transportation to

[2] Such a result is codified, effective January 1, 2017, in Education Code, Section 48853, subdivision (d), which provides that if any dispute arises as to the school placement of a pupil placed in a licensed children's institution , the pupil has the right to remain in his or her school of origin pending resolution of the dispute. (Ed. Code § 48853(d).)

Utah. Thus, the date Student residency, and responsibility for Student's education, would have shifted to Pasadena, has not been established. [3]

The facts in this proceeding are unique and complicated, involving an out of state placement, a foster youth residing in a licensed children's institution, an educational rights holder in another school district, a prior due process proceeding and a settlement agreement. The issue of whether the intersection of the IDEA and California residency requirements provide a mechanism for Alhambra to unilaterally change the legal residence of a disabled foster child residing within its boundaries and thereby avoid financial responsibility for the education of that child by offering her a FAPE in a residential placement outside its district, or whether the Education Code protections for homeless foster youth come into play, is fact specific and requires a further evidentiary hearing.

Alhambra Unified School District shall fund Student's placement at the Alpine Academy in Utah pursuant to the October 31, 2016, from the date of Student's attendance at the Alpine Academy from November 21, 2016 through the issuance of a decision in this matter as Student's stay put placement.

IT IS SO ORDERED.

DATE: January 12, 2017

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Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

[3] Assuming enrollment was completed on December 16, 2016, and that Pasadena was then Student's district of residence for IDEA purposes, Pasadena had 30 days, from December 16 through January 15, 2017, to adopt an interim program that approximated Student's old IEP as closely as possible until Pasadena adopted the October 31, 2016 IEP or developed a new IEP. Pasadena was not, and is not through January 15, 2017, required to fund Student's continued placement at a residential program in Utah unless it offered to do so on an interim basis. A school district is required, for students with special needs living in a licensed children's institution, to first consider services in programs operated by that district. (Ed. Code, § 56157, subd. (b).) If and to the extent Student contends that Pasadena's interim program was not sufficient to provide Student with a FAPE, and that stay put should be the Utah placement for that reason, Student failed to submit the proposed interim IEP.