BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. OCEANSIDE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015110951 ORDER: (1) GRANTING REQUEST FOR RECONSIDERATION AND (2) DENYING MOTION FOR STAY PUT

On December 8, 2015, the undersigned administrative law judge issued an order denying Student's motion for stay put. On December 10, 2015, Student filed a motion for reconsideration. On December 11, 2015, Oceanside 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. (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).)

DISCUSSION

In his motion for reconsideration, Student submits a copy of his last agreed upon and implemented individualized education program, dated February 6, 2015, which was missing from the original motion. The operative IEP constitutes a new showing of facts, and the request for reconsideration is granted.

This order, upon reconsideration, holds that Student has not established that District must transport Student to a new location outside of District boundaries, and Student's motion for stay put will be denied.

In his original motion, Student sought a stay put order requiring District to transport Student to an after school private daycare facility located out of District that provides pediatric health care and extracurricular activities. Parent's sworn declaration stated that: District had previously transported Student after school to a private daycare facility within District boundaries that could care for Student's many physical needs; when the daycare facility moved outside of District boundaries, District refused to transport Student to a location beyond its boundaries; the Parent works full-time and cannot find a daycare facility within District boundaries that will provide Student with the after school care he needs; Parent designated the address of a relative within District boundaries for after school transportation on September 9, 2015,but added the new daycare facility address as an alternate drop-off on September 7, 2015; Parent believes she was coerced into choosing an in-district address and wants the new daycare facility address to be designated as Student's stay put for transportation purposes.

In opposition, District submitted sworn declarations of staff stating that: Student's last agreed upon and implemented IEP called for transportation from school-to-home, District transported Student to a daycare facility within District until that facility closed the in-district location; since that time District has transported Student after school to his aunt's house; and District has not transported, or offered to transport, Student to a location outside of District.

The February 6, 2015 IEP calls for "curb to curb" transportation. District's evidence establishes that the last agreed upon and implemented afternoon drop-off location was the residence of Student's aunt. Student's contention that Parent was coerced into choosing an in-district address, and would never have consented to the address change had she known her rights, is a matter for factual inquiry at a due process hearing. On the evidence offered, an out-of-district location has never been offered in any of Student's IEP's, or implemented, and cannot be the basis of stay put.

For the reasons stated above, the previous denial of Student's motion for stay put is reconsidered and again denied.

IT IS SO ORDERED.

DATE: December 23, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings