BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matter of: PARENT ON BEHALF OF STUDENT, v. CAPISTRANO UNIFIED SCHOOL DISTRICT.	OAH Case Nos. 2016100466 and 2017030402 ORDER DENYING REQUEST FOR RECONSIDERATION

On April 4, 2017, Student filed a motion for stay put. On April 7, 2017, District filed an opposition. On April 11, 2017, the undersigned Administrative Law Judge issued an order denying Student's motion for stay put. On April 24, 2017, Student filed an amended motion for stay put which will be construed as a request for reconsideration. Student included the individualized education plans as exhibits to the request for reconsideration that were not included with the original motion for stay put. District did not respond.

APPLICABLE LAW

There is no provision in special education law regarding reconsideration of orders issued by administrative law judges. 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); 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

Student's original motion for stay put asked for an order that Student's math class be removed from her schedule. Student contended that during the IEP team meeting in August 2016, the team agreed to place Student in five classes on campus and one online class. Student further contended that during an IEP team meeting on November 10, 2016, the team agreed to drop the online class and Student would only have five classes. Student argued District unilaterally changed her placement at the February 16, 2017 IEP meeting by adding a sixth class for math. District argued Student always had six classes, however, the format changed when the IEP team determined Student was not able to succeed in an online class. Neither Student nor District provided copies of the IEP in question documenting Student's current placement.

Student attached the IEP documents to her request for reconsideration, however, did not offer any explanation as to why they were not provided with the original motion for stay put. Furthermore, although the notes section of the IEP from November 10, 2016, states "team feels [Student] needs to be on a modified 5 period day schedule" that IEP was not consented to by parent. Parent checked the no consent box on the signature page of the November 10, 2016 IEP and wrote that District did not have an appropriate math class for Student. Another IEP team meeting was held on February 1, 2017, and again the math class was discussed. On the signature page of that IEP Parent checked the no consent box and wrote "math class is needed as [Student] has not had access to math." Student is asking for stay put, however, has not provided any documentation that what she is asking for was agreed upon and implemented.

ORDER

Student's motion for reconsideration is denied.

DATE: April 28, 2017

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings