BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016070639 ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING STAY PUT

On July 13, 2016, Student filed a motion for stay put concurrently with a request for due process hearing and mediation (complaint). On July 15, 2016, District filed an opposition. On July 19, 2016, Student filed a response to District's opposition. On July 22, 2016, the undersigned administrative law judge issued an order denying Student's motion for stay put. On July 22, 2016, Student timely filed a request for reconsideration attaching two declarations under penalty of perjury and a copy of Student's last agreed upon IEP. District did not file 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); 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).)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Bd. of Ed.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.)

DISCUSSION

Reconsideration

Student has alleged new facts in support of his request for reconsideration that were not presented with the original motion. Specifically, Student offered a sworn declaration from Student's mother, and from Dawn O'Connor, Program Director at Speech and Language Development Center (SLDC). Student also offered a complete copy of his June 6, 2016 individualized education program in which District offered Student placement for the 2016 extended school year and the 2016-2017 school year at a non-public school, and specifically SLDC. Ms. O'Connor stated in her declaration that, despite a contract dispute with District, SLDC had a place reserved for Student and was prepared to accept and provide services to Student immediately. These facts are sufficient to warrant reconsideration of the order denying stay put. Student's request for reconsideration is granted.

Stay Put

On reconsideration, the original Order denied stay put because a change in circumstances in the contractual relationship between District and SLDC resulted in District's inability to place Student at SLDC for the 2016 extended school year, and possibly the 2016-2017 regular school year, as required by the June 7, 2016 IEP. Student's original motion was unsupported by any sworn declarations or a copy of his last agreed upon and implemented IEP. He offered no evidence in the original motion that SLDC was willing to accept Student from District notwithstanding the contractual dispute, which District argued was a change in circumstances. District did not dispute that it would have placed Student at SLDC during 2016 extended school year and for the 2016-2017 school year, but for the stalemate in its contract dispute with SLDC.

Ms. O'Connor's declaration establishes that Student has attended SLDC since the 2014-2015 school year. SLDC is open for business, and has availability for Student to immediately attend SLDC. Parent consented to continued placement at SLDC in the June 7, 2016 IEP, and District does not dispute that SLDC was its placement offer in the June 7, 2016 IEP. District has offered no evidence that it cannot enter into an agreement with SLDC to implement Student's June 7, 2016 IEP as his stay put placement during its pending contract dispute with the non-public school and during the pendency of this action. For these reasons, Student's motion for stay put is granted.

ORDER

1. Student's request for reconsideration is granted.

2. Student's motion for stay put is granted. Student's stay put placement is the Speech and Language Development Center.

3. District shall make arrangements with the Speech and Language Development Center to return Student to that placement within five business days of this order, or no later than the first day of the 2016-2017 regular school year.

DATE: July 27, 2016

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Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings