

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009060771

DENIAL OF REQUEST FOR
RECONSIDERATION AND ORDER
ON RENEWED MOTION FOR STAY
PUT

On June 18, 2009, ALJ Richard T. Breen denied Student's motion for stay put on the ground that the motion was not supported by evidence demonstrating the last agreed-upon implemented placement for Student.

Student filed a motion for reconsideration. The motion for reconsideration contended that reconsideration was warranted because OAH did not identify a stay put placement. The motion for reconsideration supplied additional evidence and made a different contention regarding stay put than that identified in Student's original stay put motion. Rather than alleging, as did the original stay put motion, that Student was entitled to the placement Parent agreed to in the June 3, 2008 IEP, Student now acknowledges that Parent did not agree to the June 3, 2008 IEP. Student now contends that he is entitled to stay put in the placement he has attended historically.

District opposed reconsideration on the ground that Student's first motion for stay put was properly denied based on Student's failure to supply sufficient evidence and Student's failure to offer any explanation why Student's current evidence and argument was not made in the original motion. As to the merits, District contends that Student's stay put placement is either the placement set forth in the June 3, 2008 IEP, which, despite Student saying he agreed to, is not the stay put placement he seeks. Alternatively, District contends that Student's stay put placement is governed by a settlement agreement between the parties. In addition, District requests that a July 2, 2008 settlement agreement between the parties be sealed because it is confidential.

As discussed below, Student has not shown that reconsideration is warranted, particularly when Student makes a new argument based on different evidence. However, Student's motion for reconsideration will be construed as a renewed motion for stay put. Based on new evidence provided by Student, Student's stay put placement shall be determined by the terms of the June 12, 2007 IEP. District's motion to seal the July 2, 2008 settlement agreement is denied.

Reconsideration

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.)

Here, reconsideration is not warranted. Student's stay-put motion alleged that Student was entitled to stay put based on Parent's consent to a June 3, 2008 IEP. However, the evidence provided by Student in support of the motion showed that Student's position was not correct, i.e., Student was seeking stay-put enforcement of a disputed IEP that Parent had not agreed to. Student's original stay put motion provided OAH with no other evidence from which to determine stay put. Accordingly, because the stay put motion was denied based upon Student's failure to provide OAH with sufficient evidence on which to determine the stay put placement, reconsideration is not warranted.

Renewed Motion for Stay Put

Student's motion for reconsideration will be considered as a new motion for stay put. Student now contends that the rather than stay put being based on Parent consent to the June 3, 2008 IEP (which was not consented to), stay put should be determined generally from Student's prior placements and from Parent's agreement to a June 12, 2007 IEP. District disagrees, contending either the terms of the unexecuted June 3, 2008 IEP control or the last agreed upon placement is dictated by the terms of a settlement agreement between the parties. As discussed below, the June 12, 2007 IEP controls for purpose of stay put.

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) In generally, the last implemented placement means the last placement that a parent and a school district agreed upon at an IEP meeting. (See Ed. Code, § 56346, subd. (e) [when parent consents to only part of an IEP, District only obligated to implement the services agreed to]; *John M. v. Board of Education of Evanston Twshp. High Sch. Dist.* (7th Cir. 2007) 502 F.3d 708, 715 [generally treats last implemented placement as last agreed to placement]; *Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 10 [same].)

Here, as previously concluded in the June 16, 2009 order denying Student's motion for stay put, the June 3, 2008 IEP is not Student's stay put placement because the placement was never agreed to by Parent. The June 3, 2008 IEP offered Student extended school year (ESY) placement in a special day class (SDC). For the 2008-2009 school year, the June 3,

2008 IEP offered Student the following placement and related services: general education with 1:1 aide support; RSP support; 30 minutes per week of individual speech therapy; and 60 minutes per week of behavior consultation/social skills training. Parent did not agree to the June 3, 2008 IEP at the time it was drafted. As to ESY for 2008, the parties agreed to a limited term ESY placement in a July 2, 2008 settlement agreement. The July 2, 2008 settlement agreement is silent as to Student's placement during the regular school year. At an addendum IEP team meeting held on December 4, 2008, Parent agreed only to the goals in the June 3, 2008 IEP. Because the offer of placement in the June 3, 2008 IEP as to placement and services both for ESY and the regular school year was never agreed to, it cannot be the status quo for purposes of stay put.

District's contention that a July 2, 2008 settlement agreement between the parties defines stay put is not supported by the evidence. The settlement agreement provided by District shows that the parties agreed to a temporary placement for Student and in no way defined Student's placement for purposes of stay put going forward. The July 2, 2008 settlement agreement between the parties does not set forth Student's stay put placement.

In the renewed motion for stay put, Student provided evidence that Parent and District agreed to an IEP dated June 12, 2007. In Student's motion, he concedes that "The June 12, 2007 IEP documents that [Parent] agreed with the placement and program being provided to [Student] at San Rafael." Student's contention is supported by Attachment B to the motion, which shows that at an addendum IEP on October 30, 2007, the IEP notes show that Parent intended to agree to the placement recommendations. At the bottom of the same page, Parent's signature appears, although with the date of June 12, 2007 under the statement "I agree to the contents of the addendum to the IEP dated 10/30/07." Agreement to the addendum IEP on October 30, 2007 constitutes agreement to the June 12, 2007 IEP. Based on this evidence provided by Student, and Student's concession in the motion that the June 12, 2007 IEP was agreed to, the last implemented placement and related services is the following, as set forth in the June 12, 2007 IEP: 1) For ESY – placement in a special day class (SDC) at San Rafael Elementary School without related services; 2) for the regular school year – placement in a grade-level general education class at San Rafael Elementary School with a 1:1 aide and 30 minutes of individual speech therapy per week.

Motion to Seal Settlement Agreement

District requests that OAH seal the July 2, 2008 settlement agreement because it is confidential. However, the settlement agreement itself does not contain a confidentiality clause. Moreover, the settlement did not arise from a confidential mediation, but instead was the result of a resolution session. Contrary to a mediated agreement, there is no requirement that agreements resulting from resolution sessions be confidential. (See Ed. Code, §§ 56501.5, subd. (f); Cal. Code Regs., tit. 5, § 3086, subd. (b).) The settlement agreement is not confidential and need not be sealed.

ORDER

1. The July 12, 2007 IEP is the last agreed-upon and implemented IEP for purposes of stay put.
2. Under the terms of the June 12, 2007 IEP, Student's stay put placement for ESY is in an SDC at San Rafael Elementary School.
3. Under the terms of the June 12, 2007 IEP, Student's stay put placement for the regular school year is a grade-level general education class with a 1:1 aide, and the related service of 30 minutes per week of individual speech therapy.
4. District's request to have the July 2, 2008 settlement agreement filed under seal is denied.

Dated: June 26, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings