

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010071013

ORDER DENYING DISTRICT'S
REQUEST FOR RECONSIDERATION

On August 18, 2010, the undersigned Administrative Law Judge (ALJ) issued an order partially granting Student's motion for stay put. On September 2, 2010, the Elk Grove Unified School District (District) filed a motion for reconsideration of the ALJ's order. Student filed an opposition to the District's motion on September 7, 2010. The District filed a reply to Student's opposition on September 9, 2010.

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.)

DISCUSSION AND ORDER

In its motion, the District presents arguments not raised previously in its original opposition to Student's motion for stay put. The District also argues that the ALJ misconstrued the evidence by misreading the information in the individualized education program (IEP) document at issue in the motion for stay put. Student responds that the District has not proffered any new evidence or new legal authority that was not available at the time the District filed its opposition to Student's motion for stay put.

The District makes arguments in its motion that it could have made, but chose not to, in its opposition to the motion for stay put. The ALJ relied on several factors in making her determination that a non-public agency (NPA) was Student's stay put, including but not limited to the fact that the NPA which is no longer operating was present at and participated

in the IEP meeting that resulted in the formulation of Student's stay put IEP. She considered the facts presented by the District that it has qualified personnel who are capable of implementing Student's IEP. However, the fact that its personnel are qualified to implement the IEP does not result in a finding that District-provided behavior services is the stay put for Student under his last agreed-upon and implemented IEP. The District has not made a showing of new or different facts, circumstances, or law that would justify granting its motion for reconsideration. Accordingly, the District's motion for reconsideration is denied.

IT IS SO ORDERED.

Dated: September 22, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings