

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIPON UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010080006

ORDER GRANTING REQUEST FOR  
RECONSIDERATION

On August 6, 2010, the undersigned administrative law judge (ALJ) issued an order denying Student's Motion for Stay Put (Motion) to the extent it sought the placement and services listed in an IEP dated April 9, 2007. Student's Motion primarily sought an order requiring the District to provide behavior intervention services from Genesis, an NPA provider that had served Student in the past either under contract to the District, or during periods of unilateral parental placement. The following order was issued on the Motion:

1. The Motion for Stay Put is denied to the extent it seeks enforcement of the April 9, 2007 IEP as the stay put placement.
2. Unless the parties agree otherwise, Student's stay put placement while the instant due process hearing request is pending shall be those portions of the May 18, 2007 to which parent agreed, specifically:
  - a. placement in an age-appropriate District general education classroom;
  - b. two, 20 minutes speech therapy sessions per week, delivered on a "pull out" basis during the school day;
  - c. a 1:1 classroom behavior intervention aide to be provided during the school day for 375 minutes, five days a week;
  - d. 16 hours per month of behavior intervention consultation;
  - e. six hours per week of home behavior intervention, academic support and parent training; and,
  - f. two, 50-minute occupational therapy sessions per week (for a total of 100 minutes) in a clinic setting to be provided by someone other than a District employee.
3. The services in paragraphs 2.c., 2.d., and 2.e., shall be provided by the Genesis NPA if, as of the date of this motion, it is under a contract with the District or its SELPA. If Genesis is not under contract with the District or SELPA, or otherwise chooses not to provide services to Student, then the

services shall be provided by any NPA under contract with the District or its SELPA.

On August 9, 2010, Student sought reconsideration of the order on the Motion. Student contends that reconsideration is warranted because after the issuance of the order, District informed Student that Genesis was not under contract with the District and that District intended to provide the services through “Living Well,” an agency that is not currently an NPA.<sup>1</sup> Student also contends that “Living Well” would be inappropriate because it is owned by a District employee.

On August 12, 2010, District filed an opposition to reconsideration. District contends reconsideration is not warranted because: 1) as of the date of the Order, Genesis was not under a master contract with the District to provide behavior services and had declined to sign at the District’s rate; 2) that as of the date of the Order, District intended to enter a contract with “Living Well,” which is in process of becoming an NPA, but is owned by the same person who owns an NPA called “PLAY;” 3) “PLAY” will not enter a contract to serve Student, and District is not presently in a contract with any other NPAs for behavior services; 4) “PLAY” and “Living Well” are owned by a District employee, Kristi Miklusicak, who is willing to contract individually to provide the behavior services; and 5) District is justified in not using Genesis because of past instances of Genesis not complying with District policies and past contracts. In support of its opposition, District provided evidence that as of the date of the Order it was not under contract with any NPA for behavior services but was in the process of seeking contracts with other NPAs. District also provided evidence of non-specific instances of Genesis allegedly failing to follow District policy or its prior contract with District.

On August 13, 2010, Student filed a reply to District’s opposition. Student’s reply included credible evidence from the owner of Genesis that as of August 3, 2010, days prior to the date of the Order, District was in contract negotiations to renew its contract with Genesis; however, minutes after the issuance of the Order, District ended those contract negotiations and refused to contract with Genesis. Student also provided evidence that Genesis was under contract with the SELPA to serve other students.

#### 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

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<sup>1</sup> Student also provided evidence and argument about the District’s provision of services to other students in the District. This evidence and argument is irrelevant to Student’s stay put motion and will not be considered.

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

Here, reconsideration is warranted based on changed facts and circumstances. In its original opposition to the stay put motion, filed on August 4, 2010, District never informed OAH that it currently had no NPA contracts for behavior services and was in discussion with Genesis. Student has provided credible evidence that the District's own Superintendent fully expected to contract with Genesis as of August 3, 2010. In particular, the District's Superintendent wrote to Genesis, "I anticipate receiving your signature on the Master Agreement already approved by the Board." The Superintendent's letter also makes reference to anticipating a future relationship with Genesis. Such a glaring omission of facts by the District reinforces Student's contention that the District is attempting to subvert the intention of stay put by manipulating the contracting process. District's attempts to justify its conduct by arguing Genesis is no longer qualified to provide services based on non-specific alleged misconduct at unspecified times is also inconsistent with the intention of stay put to automatically preserve the status quo.

To the extent District attempts to argue that the behavior services can be provided by Kristi Miklusicak individually, or doing business as "Living Well," this is also inconsistent with stay put. The May 18, 2007 IEP was unambiguous that Genesis, or another NPA were to provide the behavior services provided for in the IEP, with a preference for Genesis. At the time the Motion for Stay Put was filed, neither "Living Well" nor Kristi Miklusicak were NPAs, such that they cannot provide stay put services. District has submitted a sworn declaration that the "PLAY" NPA, which is owned by Kristi Miklusicak refuses to serve Student.

As discussed in the Order, the notes pages of the May 18, 2007 IEP made it clear that it was anticipated that Genesis would provide the behavior services. Reconsideration is justified because District's manipulations, both of the facts provided to OAH, and the contracting process with Genesis subsequent to the Order, are wholly inconsistent with the spirit and the letter of stay put. Student's request for reconsideration is granted. As set forth below, the Order will be modified to require District to provide behavior services from Genesis while the instant dispute is pending. In addition, District is barred from using "Living Well," Kristi Miklusicak or "PLAY" to provide the stay put behavior services because they were either not NPAs or have refused to serve Student as of the date of this Order.

## ORDER

Student's Request for Reconsideration of the Order Denying Motion for Stay Put is granted. The Order Denying Motion for Stay Put is modified to read:

1. The Motion for Stay Put is denied to the extent it seeks enforcement of the April 9, 2007 IEP as the stay put placement.
2. Unless the parties agree otherwise, Student's stay put placement while the instant due process hearing request is pending shall be those portions of the May 18, 2007 IEP to which parent agreed, specifically:
  - a. placement in an age-appropriate District general education classroom;
  - b. two, 20 minutes speech therapy sessions per week, delivered on a "pull out" basis during the school day;
  - c. a 1:1 classroom behavior intervention aide to be provided during the school day for 375 minutes, five days a week;
  - d. 16 hours per month of behavior intervention consultation;
  - e. six hours per week of home behavior intervention, academic support and parent training; and,
  - f. two, 50-minute occupational therapy sessions per week (for a total of 100 minutes) in a clinic setting to be provided by someone other than a District employee.
3. The services in paragraphs 2.c., 2.d., and 2.e., shall be provided by the Genesis NPA. If Genesis chooses not to provide services to Student, then the services shall be provided by any NPA that was registered with the State of California prior to August 2, 2010, the date Student filed the instant request for due process hearing and Motion for Stay Put. The NPA called "PLAY" shall not serve provide any behavior services while the stay put order is in effect.

IT IS SO ORDERED.

Dated: August 19, 2010

/s/

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RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings