

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR VALLEY UNION HIGH
SCHOOL DISTRICT AND DESERT
MOUNTAIN SPECIAL EDUCATION
LOCAL PLAN AREA.

VICTOR VALLEY UNION HIGH
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011080031

OAH CASE NO. 2011080382

ORDER DENYING STUDENT'S
REQUEST FOR RECONSIDERATION
OF ORDER DENYING MOTION FOR
STAY PUT

On July 28, 2011, Student filed a due process hearing request (complaint) naming the Victor Valley Union High School District (District), the Desert Mountain Special Education Local Plan Area (SELPA), the San Bernardino County Superintendent of Schools (Superintendent)¹, and the San Bernardino County Education Support Services Division², as respondents. On August 1, 2011, Student filed a motion for stay put, requesting that Student, who completed the eighth grade at Lakeview Middle School (Lakeview) in June 2011, remain at Lakeview during the pendency of this matter. On August 4, 2011, District filed an opposition contending that the Individuals with Disabilities Education Act (IDEA) contemplated that stay put would include matriculation to Student's next grade level during

¹ On December 2, 2011, the Office of Administrative Hearings (OAH) dismissed the San Bernardino County Superintendent of Schools as a party in this matter.

² On October 26, 2011, OAH dismissed the San Bernardino County Education Services Division as a party in this matter.

the pendency of a due process matter, and thus, Student needed to matriculate to his home school, Victor Valley High School (Valley). On August 7, 2011, Student filed a reply to District's opposition stating that matriculation to high school would be detrimental to Student, and would be "damaging to [his] career and reputation."

On August 8, 2011, District filed a complaint naming Student as respondent, and then filed a Notice of Insufficiency of Student's complaint on August 12, 2011. On August 15, 2011, OAH found Student's complaint insufficient, and gave Student 14 days to amend his complaint. On August 16, 2011, Administrative Law Judge (ALJ), Carla L. Garrett, issued an order denying Student's motion for stay put, and explained that Student must progress to the next grade in order to maintain the status quo for purposes of stay put. Specifically, ALJ Garrett ordered that Student's stay put for the duration of this proceeding was as follows:

- (a) Placement at Victor Valley High School in the ninth grade;
- (b) four 45-minute sessions of specialized academic instruction per day;
- (c) occupational therapy services for one 45-minute session per week;
- (d) speech and language services for one 30-minute session per week;
- (e) a one-to-one aide for Student's entire school day to be provided by a District aide;
- (f) general education instruction with specified accommodations, modifications, and adaptations for three 45-minute class periods (physical education, an elective, and science) per day by general education staff in a general education setting;
- (g) one 30-minute session of individual counseling; and
- (h) ten hours of non-public agency (NPA) services to supervise the transition from NPA one-to-one aide services to District one-to-one aide services.

On August 22, 2011, Student filed an "Objection to Order Denying Student's Motion for Stay Put." Although it is not completely clear, as his pleading now states that he agrees he should matriculate to ninth grade at Valley, it appears that Student sets forth eight objections: (1) the order denying Student's motion for stay put was void because OAH had previously "denied" his complaint by determining that Student's complaint was insufficient; (2) the June 8, 2010 IEP, in which OAH based its order setting forth Student's stay put for the duration of these proceedings, was not the last agreed upon IEP, and was not implemented by District; (3) the June 8, 2010 IEP was amended on March 21, 2011 to add a general education class of Cadet Corps, which was not reflected in OAH's order setting forth Student's stay put; (4) Student required an "ABA BPA Autism Aide, as opposed to a one-on-one District aide as set forth in OAH's order setting forth stay put, as stated in a April 18, 2011 manifestation IEP, as well as in a subsequent June 2, 2011 IEP; (5) Mother provided consent to the IEP dated June 2, 2011, with the exception of placement, which is the operable IEP for the purposes of stay put; and (6-8) the OAH order reduces Student's placement in the least restrictive environment by providing three general education classes as opposed to five, as set forth in the June 2, 2011 IEP, (i.e., English Language Arts, U.S. History, Cadet Core, Music, and Physical Education), and by providing four special education classes, as opposed to three, as set forth in the June 2, 2011 IEP, (i.e., Reading, Science, and Algebra). For the

purposes of this order, Student's objections will be deemed a motion for reconsideration of OAH's order denying Student's motion for stay put.

On August 26, 2011, District filed an opposition. In response to Student's specific objections, District argues that (1) Student's motion for stay put was not voided by OAH's determination that Student's complaint was insufficient; (2) Mother consented to the June 8, 2010 IEP on July 1, 2010 as it pertained to the services, but disagreed with issues related to placement and the fading out of NPA services; (3) although the OAH order did not specify Cadet Corps., which appeared in a March 21, 2011 addendum to the June 8, 2010 IEP, it did set forth as stay put a general education elective, in which Cadet Services could be selected; (4) Student's contention regarding needing an autism aide argues facts about the substance of the current matter that must be adjudicated by OAH, and not the subject of stay put; (5) Mother provided partial consent to the June 2, 2011 IEP after the filing of Student's complaint, Student's motion for stay put, and after the filing of District's opposition to Student's motion for stay put, and thus, the June 2, 2011 IEP was not the operable IEP for purposes of stay put; and (6-8) Student's arguments about the appropriate number of general and special classes related to the June 2, 2011 IEP involves facts about the substance of the current matter that must be adjudicated by OAH, and not the subject of stay put.

On August 31, 2011, Student filed an amended complaint. On September 23, 2011, OAH consolidated the two cases.

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

Student alleges no new facts, circumstances, or law in support of the request reconsideration. Student, who filed no sworn declaration to accompany his motion, referenced eight objections that were either erroneous or irrelevant for the purpose of stay put. Specifically, Student's first objection, which contended that OAH's order regarding stay put was void, because OAH had previously "denied" his complaint is erroneous. When OAH issued its order determining that Student's complaint was insufficient, it did not "deny" or dismiss Student's complaint. Rather, it permitted Student an opportunity to file an amended complaint to cure the defects set forth in his initial complaint, which Student completed on August 31, 2011. In Student's second objection, he contends that the June 8, 2010 IEP was not the last agreed upon and implemented IEP, yet the June 8, 2010 IEP and a July 1, 2010 letter from Mother, which District attached to its opposition to Student's motion

for stay put, demonstrated that Mother consented to the IEP, with the exception of placement, the fading out of NPA services, and various notes in the IEP.

In Student's third objection, which argues that the stay put order was erroneous because it did not include a reference to Cadet Corps, Student, who included no declaration or copies of any IEPs to his motion for stay put, failed to include a copy of the March 21, 2011 amendment, as well. As such, Cadet Corps was not included in the stay put order. However, the Cadet Corp class was an available fact at the time of the filing of the stay put motion, and not a new fact for the purposes of reconsideration. As such, the order denying Student's motion for stay put stands.

In Student's fourth, sixth, seventh, and eight objections, where Student argues that without an "ABA BPA Autism Aide," attending school would be detrimental to Student, and that Student should be receiving five general education courses, as opposed to three as set forth in the stay put order, and three special education courses, as opposed to four, these matters were not subject of the stay put motion or in any IEP attached to the motion. Finally, with respect to objection five, there appears to be a factual dispute concerning the date Mother purportedly provided partial consent to the June 2, 2011 IEP, specifically whether consent occurred prior to or subsequent to Student's filing of the stay put motion and District's opposition thereto. Such factual disputes must be resolved within the context of a due process hearing, and not in a stay put motion. Accordingly, and for the reasons stated above, Student's request for reconsideration is denied.

IT IS SO ORDERED.

Dated: December 19, 2011

/s/

CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings