

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST COVINA UNIFIED SCHOOL
DISTRICT AND CALIFORNIA VIRTUAL
ACADEMY

OAH CASE NO. 2011090455

ORDER GRANTING REQUEST FOR
RECONSIDERATION AND DENYING
STUDENT'S MOTION FOR STAY PUT

On September 22, 2011, the undersigned administrative law judge (ALJ) issued an order granting Student's motion for stay put (motion). On October 5, 2011, Julie D. Robbins, Attorney for the California Virtual Academy (CAVA), filed a request for reconsideration on behalf of CAVA. Student did not file a response or an opposition to the request for reconsideration.

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)¹; 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 (IEP), 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

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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.)

DISCUSSION

Reconsideration

Student’s motion for stay put that was filed on September 12, 2011 was not supported by a sworn declaration. However, as neither the West Covina Unified School District (District) nor CAVA filed a response to the motion, the ALJ relied on the available information at the time, as provided by Student, in granting Student’s stay put motion.

In its motion for reconsideration, CAVA alleges that it was denied an opportunity to be heard on Student’s motion because Student did not serve the motion on CAVA. In support, CAVA has submitted a sworn declaration from counsel. Student has provided no response to establish that Student properly and timely served CAVA with his motion. District has therefore, presented new facts establishing that it could not have timely responded to Student’s motion. Accordingly, CAVA’s motion for reconsideration is granted.

Stay Put

Regarding the question of whether Student was entitled to stay put protection under the Individuals with Disabilities Education Act, the ALJ relied on the August 17, 2011 IEP, which Student presented as his last agreed upon and implemented IEP prior to the current dispute arising. However, in its opposition, CAVA contends that the August 17, 2011 IEP that Student provided as his last agreed upon and implemented IEP, was Student’s initial IEP, which has neither been consented to by parent nor implemented by District prior to the current dispute arising. Therefore, CAVA contends that Student is not entitled to stay put protection as he has never received special education services from CAVA. In support of its contention, CAVA has provided the sworn declaration of its program specialist, Rebecca Metoyer.

Student has not provided a sworn declaration or argument responding to, or otherwise disputing, the facts alleged by CAVA. Therefore, CAVA has established that Student’s last agreed upon and implemented placement was not the August 17, 2011 IEP. Accordingly, Student’s motion for stay put is denied.

ORDER

1. CAVA’s request for reconsideration is granted.

2. Student's motion for stay put is denied.

Dated: October 11, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings