

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VALLEJO CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012020757

ORDER DENYING REQUEST FOR
RECONSIDERATION

On March 9, 2012, the undersigned administrative law judge issued an order granting Student's motion for stay put. On March 15, 2012, The Vallejo City Unified School District (District) filed a motion for reconsideration. On March 21, 2012, Student filed an opposition to the motion.

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

District submits short excerpts of the transcript from the audio recording of the individualized education program (IEP) team meeting of May 19, 2011, asserting that these are "new" facts or circumstances in support of the request reconsideration of the stay put order. District also submits an audio recording of the IEP team meeting, without a transcript of the recording, or those portions of the recording including the complete discussion of the home instruction services ordered as stay put.

The declaration of District's counsel, Rodney Levin, contains no explanation for District's failure to previously provide this evidence, which is not "new" and was available at the time District filed its opposition, supplemental opposition, and second opposition to Student's motion for stay put. For this reason, District's motion for reconsideration is denied.

However, were District's transcribed excerpts to be substantively considered, they are not persuasive. The excerpts are selective, provided without the context of the complete discussion of home instruction, and lack any statements by Grandmother or Student's advocate agreeing to the proposed limitation on the duration of services.

California law places the burden of providing the parent with a copy of the child's IEP, and of obtaining written parental consent to implementation of an IEP, on the school district. (Ed. Code, §§ 56341.5 subd. (j) and 56346 subd. (a).) A parent, however, is given the discretion to consent to receipt of less than all services offered in an IEP. (Ed. Code, § 56346 subd. (e).)

The law concerning stay put does not contemplate a situation where, as here, the school district implements special education services without written parental consent, and neither provides the parents with a copy of the IEP, nor requests written consent thereto. Student established verbal parental consent to implementation of home instruction without fixed duration, and District conceded that it implemented home instruction with no more than that verbal consent, for a period of approximately four months. District cannot avoid its stay put obligations by submitting unsigned IEPs, or transcripts of statements by District personnel, purporting to impose termination dates on implemented services.

The motion for reconsideration is denied.

IT IS SO ORDERED.

Dated: March 22, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings