

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROSEVILLE CITY ELEMENTARY
SCHOOL DISTRICT, ROSEVILLE JOINT
UNION HIGH SCHOOL DISTRICT AND
PLACER COUNTY OFFICE OF
EDUCATION.

OAH CASE NO. 2013080295

ORDER GRANTING MOTION FOR
RECONSIDERATION AND DENYING
MOTION FOR STAY PUT

On August 5, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint) naming the Roseville City Elementary School District (RCSD), the Roseville Joint Union High School District (RJU), and the Placer County Office of Education (COE) as respondents.

Also on August 5, 2013, Student filed with OAH a motion for stay put requesting OAH to order RJU, where Student was now attending, to be required to provide after-school transportation from school to a pediatric care facility, My Friends daycare, outside the geographical boundaries of RJU. Student contended that the post-school transportation was agreed to by Student's IEP team and should have been part of his last IEP.

Each of the three respondents filed oppositions to Student's motion.

On August 15, 2013, OAH, by the undersigned, denied Student's motion. In the order, the ALJ stated:

The IEP's of May 30, 2012; September 19, 2012; October 31, 2012; and January 28, 2013 all provide "home to school transportation" with the following notation: "[Student] will require a bus with temperature control/air conditioning due to her medical condition. Parent requesting after-school transportation to My Friends Daycare in Orangevale." In the meeting notes of the May 30, 2012 IEP, the following was noted:

Transportation services will be offered. Parent is specifically asking for PM transportation to My Friends Daycare, located outside the boundaries of the district. The Program Specialist will review this request with the RCSD

director, and will review the decision with the parent and the RCSD transportation office.

There does not appear any further discussion regarding transportation as indicated in meeting notes of the following three IEP meetings. Student also submitted an email dated June 7, 2012, where Jeff Chalfont of RCSD stated that Parent's transportation request for "PM transportation to My Friends Daycare in Orangevale" had been approved and sent on to the transportation coordinator.

Debbie Morris, the RCSD special education director, stated that RCSD offered home to school transportation which did not include transporting Student to a day care location after school. She also declared that the District granted Parent's request to transport her to My Friends Daycare "as a courtesy outside of the IEP process."

Student has failed to demonstrate that the IEP required RCSD to transport Student to her daycare after the school day. Student cites as evidence to support the motion a telephone conversation Parent had with Ms. Karen Armstrong of the COE. Parent contends that Ms. Armstrong stated that there was a mistake in the IEP which should have indicated that RCSD had agreed to transport Student to her daycare. Ms. Armstrong indicated that she would try to rectify the situation with RJU. The statement is not under oath and is hearsay. The IEP's and the declaration of Ms. Morris indicate that the IEP did not require Student to be transported to day care in the afternoon. This is corroborated by the email from Mr. Chalfont and the IEP notes.

Student attempted to support her position by citing a purported telephone call with Karen Armstrong of the COE who purportedly said that she had made a mistake not including the agreement of RCD to transport Student after-school to My Friends. The ALJ did not consider this statement as it was unreliable hearsay.

On October 17, 2013, Student filed with OAH a pleading titled "Amended Stay Put Pre-Hearing Motion," which seeks the ALJ to reconsider the order dated August 15, 2013. In the motion, Student seeks to submit new documentary evidence obtained from document produced by the respondents, plus declarations from Parent and her Partner. Student's motion is actually a request for OAH to reconsider its August 15, 2013 order.

APPLICABLE LAW AND DISCUSSION OF RECONSIDERATION

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.)

Student has provided a meritorious argument for the ALJ to reconsider the August 15, 2013 order as the new documentary evidence submitted was not available to him at the time the stay put motion was filed.

APPLICABLE LAW AND DISCUSSION AS THE REQUEST FOR STAY PUT

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 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.)

The evidence submitted fails to demonstrate that transportation to My Friends was part of Student’s IEP. Had such transportation been required by the IEP, there would be a notation to that effect. The emails submitted do not contradict the declarations and other evidence submitted by the respondents in their oppositions to the original stay put motions which established that RCSD provided after-school transportation to My Friends as a courtesy to Parent outside of RCSD’s IEP obligations. This ruling only relates to stay put.

ORDER

1. Student’s motion for reconsideration is granted.
2. On reconsideration, Student’s motion for stay put is DENIED.

IT IS SO ORDERED.

Dated: October 17, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

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