

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HERMOSA BEACH CITY ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2013090477

ORDER DENYING DISTRICT'S
MOTION TO RECONSIDER THE
OCTOBER 18, 2013 ORDER

On September 13, 2013, Parents on behalf of Student (Student) filed a due process request (complaint) accompanied by a separate motion for stay put. In support of his stay put motion, Student attached a declaration from his father and copies of the January 24, 2013 Individualized Education Program (IEP), and the May 17, 2013 amended IEP. In his motion, Student claims that the last agreed and implemented IEP was on May 17, 2013. The Hermosa Beach City Elementary School District (District) did not file a responsive pleading.

On September 26, 2013, OAH, by the undersigned, issued an order granting Student's motion. OAH ordered the District to provide as stay put (1) specialized education instruction in a special day class for 180 minutes daily; (2) individual speech and language services (SLS) for two 30 minute sessions per week; (3) group SLS for three 90 minute sessions per week; (4) group Occupational Therapy (OT) for one 30 minute session per week; (5) OT consultation once per month for 30 minutes; (6) behavior intervention services (BIS) five times per week for 390 minutes (weekly total would equal 1,950 minutes) by a nonpublic agency (NPA); (7) BIS supervision for 12 times per month for 720 minutes by a NPA; and (8) BIS four times per month for 240 minutes in a clinic setting by a NPA.

On October 16, 2013, the District filed a request for clarification and-or reconsideration of order granting stay put. The District sought clarification of whether the stay put order permits the District to provide all 1,950 minutes weekly of BIS at the school site. The District contends that Student's prior placement was in a 20 hour weekly SDC which compelled the District to provide BIS services at home.

On October 18, 2013, Student filed an opposition to the District's request. The opposition contained a declaration by Bruce Bothwell, counsel for Student. Mr. Bothwell declared that subsequent to the OAH order dated September 26, 2013, "the parties reached an agreement [Student] would attend school 20 hours per week with one-to-one behavior support from CUSP (the NPA providing behavioral services) and would receive the remaining 12.5 hours per week of CUSP services at home."

On October 18, 2013, OAH, by the undersigned, granted the District's request for clarification and ordered that the District to provide 20 hours of BIS services at the school site and the remaining 12.5 hours at home.

On October 22, 2013, the District filed with OAH a motion for reconsideration on grounds that there has not been an agreement between the parties that Student would attend school 20 hours per week.¹ The District contends that Student's parents (Parents) unilaterally determined that Student would attend 20 hours per week at school. The District then agreed to provide BIS services for 20 hours at the school site and the remaining 12.5 hours at the home site based on Student's time in school. The District contends, in its motion, that Parents and the District agreed at the May 17, 2013 IEP meeting that Student would attend a kindergarten SDC with ABA services or a first grade SDC with ABA services, with the option of repeating the first grade SDC the following school year. The District contends that the Parents consented to this provision but did not consent to the 32.5 hours of BIS offered by the IEP team as Parents had requested a total of 40 hours BIS per week. The District requests that OAH order that the District may provide all 32.5 hours of BIS services at the school site since Student's program equals 32.5 hours per week at the school site. In support of its motion, the District has submitted a declaration from parent, which had been attached to the stay put motion, a declaration from Patricia Escalente, superintendent of the District, which had been attached to the clarification motion, partial copy of the May 17, 2013 IEP, which includes the District's offer and Parent consent to the IEP except for ABA, and the declaration of Jennifer Fain, a District attorney. Of these items, only the Fain declaration was not attached or cited in the District's motion for clarification.

OAH's October 18, 2013 took into account more than the declaration of Student's attorney. The undersigned compared the IEP's of January 24, 2013 and May 17, 2013. On page 21 of the January 24, 2013 IEP and page two of the May 17, 2013 IEP, the services being proposed are listed. Both indicate that Student is to be in a group SDC for 180 minutes weekly, 60 minutes weekly of individual speech and language services (LAS), 90 minutes of group LAS, and 30 minutes of occupational therapy. This indicates that there has been no change in the amount and delivery of services. Student, in his opposition to the latest motion, correctly states that the District has not offered a placement for the 2013-2014 school year as the May 17, 2013 IEP notes state:

“The team discussed options for placement for the following school year.² Grade placement was discussed, with the options of either a kindergarten or a first grade placement.”

¹ The District stated that at the time of its receipt of the October 18, 2013 order, District's counsel was preparing to file a response to Student's opposition.

² Student's grade level is listed as “kindergarten” on page one of the January 24, 2013 IEP document.

OAH 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.)

Here, the District has failed to allege any new or different facts. The District contends that the October 18, 2013 order was based solely on the Student attorney declaration, which is not correct. As state above, the undersigned took into consideration all matters cited in the District's reconsideration motion.

ORDER

The District's motion for reconsideration is DENIED.

IT IS SO ORDERED.

Dated: October 28, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings