

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

OAK GROVE SCHOOL DISTRICT.

OAH CASE NO. 2009101236

ORDER GRANTING REQUEST FOR
RECONSIDERATION

On November 12, 2009, the undersigned administrative law judge (ALJ) issued an order granting Student's motion for stay put. On November 16, 2009, Rod Levin, attorney for District, filed a motion for reconsideration. The Office of Administrative Hearings (OAH) has not received a response from Student.

APPLICABLE LAW

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. (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. (*Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *Zvi D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) 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.) Exceptions will be made when the identical services are no longer possible or practicable. (*Ms. S. ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133.)

California Code of Regulations, title 5, section 3042, defines "educational placement" 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.

DISCUSSION AND ORDER

Reconsideration

District’s motion for reconsideration is based upon two grounds. First, District disagrees with the undersigned ALJ’s analysis of the facts, and legal authorities. Because this argument raises neither new facts, circumstances, nor law, reconsideration is not warranted.

Second, on November 12, 2009, through sworn declaration of its counsel, District submitted additional evidence showing a change in circumstances. District submitted an email it received from parent, dated November 11, 2009, wherein parent informed District that Catch Clinic was no longer available to provide Student with behavior analyst supervisory services. In its motion for reconsideration, District asserts that OAH did not consider this evidence when issuing the November 12, 2009, order regarding continued services by Catch Clinic during the pendency of the dispute. The additional evidence was not before the undersigned ALJ when the November 12, 2009, order was issued. Therefore, these are additional facts which may be the basis for reconsideration. Accordingly, District’s motion for reconsideration is granted.

Stay Put

Parent’s November 11, 2009, email clearly establishes that Catch Clinic, the agency whose services are at issue in the motion for stay put, is no longer available to serve Student. This is a situation wherein the identical services are no longer available or practicable. Therefore, the November 12, 2009, order granting stay put and ordering the continued services of Catch Clinic shall be vacated.

ORDER

1. District’s motion for reconsideration is granted.
2. The November 12, 2009, order granting stay put is vacated.

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

Dated: November 19, 2009

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings