

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

MENLO PARK CITY ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2009101420

ORDER DENYING REQUEST FOR
RECONSIDERATION

On October 26, 2009, Parent on behalf of Student (Student) filed a due process hearing request with a motion for stay put. By Order dated November 4, 2009, ALJ Eileen M. Cohn denied in part, and granted in part, Student's motion for stay put. Student, through counsel, now files a Motion for Reconsideration of that Stay Put Order.

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.)

For purposes of stay put, the current educational placement includes the placement called for in the pupil's most recently implemented IEP. (*L.M. ex rel. Sam M. v. Capistrano Unified School Dist.* (9th Cir. 2008) 538 F.3d 1261, 1270.) Under stay put, however, "it is not intended that a child with disabilities remain in a specific grade or class pending appeal if he or she would be eligible to proceed to the next grade and the corresponding classroom within that grade." (Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514.) In most instances, progression to the next grade adheres to the status quo for purposes of stay put. (See *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534.) In *Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, the Court explained that, because of changing circumstances the status quo cannot always be exactly replicated for the purposes of stay put. The stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account changed circumstances. (*Van Scoy, supra*, 353 F.Supp.2d at p. 1086.)

DISCUSSION

The November 4, 2009 Order, subsequently modified by Order dated November 30, 2009, granted in part, and denied in part, Student's stay put request. Those two Orders required District to continue providing certain services that had been delineated in the last agreed-upon May 30, 2007, IEP. The Orders, however, denied Student's requested placement in a non-public school kindergarten class. The last agreed-upon placement in the May 30, 2007 IEP had been a non-public agency pre-school class at Associated Language and Learning Services (ALLS NPA). Student's stay put motion argued that the kindergarten class at a non-public school, Arbor Bay School (ABS NPS) was the placement that, for purposes of stay-put, replicated as closely as possible the placement that existed at the time the dispute arose.

In her November 4, 2009 Order denying that placement, Judge Cohn stated that Parent had not provided factual support for the assertion that the kindergarten class at ABS NPS was the consistent, natural progression from Student's preschool placement at ALLS NPA. For example, Parent had not provided sufficient evidence of the ABS NPS program; its affiliation to ALLS NPA; Student's eligibility to proceed to this grade and classroom within that grade as part of the ALLS NPA program; and whether progression to the next grade adheres to the status quo for purposes of stay put.

Now, three months after the November 4, 2009 Order, Student seeks to supply that evidence, not only re-arguing that the proper stay-put placement is ABS NPS, but also seeking to have that placement ordered retroactively to the commencement of the 2009-10 school year.

As justification for the lateness of the request, counsel argues: (1) new evidence supports her request; (2) she did not represent Student when the original stay put motion was first made; (3) she has been on medical leave from mid-November through the beginning of January 2010; and (4) she did not file for reconsideration promptly in January 2010 because an upcoming mediation might resolve the case, rendering these issues moot.

The Motion for Reconsideration is denied. Student has not sought reconsideration within a reasonable period of time. Notwithstanding Student's attorney's medical leave until the beginning of January, there has been no showing justifying the further month-long delay. While Student's attorney did not represent Student when the stay put motion was originally filed on October 26, she filed her Notice of Representation four days later on October 30, and could have at that time brought any relevant facts to OAH's attention. Moreover, the "new" evidence that is presented with the motion for reconsideration is not new. It is evidence of the ABS/ALLS programs that existed at the time, and could have been raised in a more timely fashion. In sum, there has not been a showing of new or different facts, circumstances, or law justifying reconsideration.

ORDER

Student's Motion for Reconsideration is denied.

IT IS SO ORDERED.

Dated: February 9, 2010

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings