

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

RIALTO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010120141

ORDER GRANTING REQUEST FOR
RECONSIDERATION; AND DENYING
MOTION FOR STAY PUT

On December 13, 2010, the undersigned administrative law judge issued an order that denied Student's motion for stay put against the Rialto Unified School District (District) on the grounds that Student did not demonstrate that the District was not implementing Student's last agreed-upon and implemented educational program. On December 14, 2010, Student filed a motion for reconsideration, contending that the December 13, 2010 order, failed to note that the District agreed at the December 18, 2009 individualized educational program (IEP) that Student's placement was at Five Acres School, and not merely at a non-public school (NPS), and that District is presently refusing to implement her last agreed-upon and implemented education program. The District did not file a response.

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

Student alleges new facts in support of the request for reconsideration regarding the District's refusal to continue Student's placement at Five Acres School, and the District's agreement in the December 18, 2009 IEP that Student's placement is Five Acres School, and not just an NPS.

Regarding the December 18, 2009 IEP, Student attached a copy of this IEP to the original motion for stay put. Student is correct that the December 13, 2010 order failed to acknowledge that the District agreed in the notes of the IEP meeting that Student's placement was at Five Acres School. Therefore, Student's motion for reconsideration is granted to correct the December 13, 2010 order that Student's last agreed-upon and implemented educational program pursuant to the December 18, 2009 IEP includes placement at Five Acres School.

As to whether the District is refusing to implement Student's last agreed-upon and implemented educational program, Student attached correspondence from the District to the motion for reconsideration. The October 2010 letters state that the District will not pay for Student's continued placement at Five Acres School for the 2011-2012 school year, and that the District considers Student being unilaterally placed at Five Acres School. Student's motion for reconsideration did not explain why no reference to these letters was made in the complaint or motion for stay put as the documents were sent to Student's Guardian. Accordingly, Student's request for reconsideration is denied as the letters should have been included with the motion for stay put.¹

ORDER

1. Student's motion for reconsideration is granted in part and denied in part.
2. The December 13, 2010 order is modified to reflect that Five Acres School is Student's placement pursuant to her last agreed-upon and implemented education program in the December 18, 2009 IEP.
3. Student's motion for stay put is denied.

Dated: December 31, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹ If RUSD is failing to implement Student's last agreed-upon and implemented educational program, Student may amend the complaint to allege that RUSD is not providing Student with a free appropriate public education.