

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. CULVER CITY UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011060217
CULVER CITY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011060075 ORDER DENYING REQUEST FOR RECONSIDERATION

On June 9, 2011, the undersigned administrative law judge issued an order denying Student's Motion for Stay Put. On July 13, 2011, Student filed a Motion for Reconsideration. On July 16, 2011, District filed an Opposition. On June 17, 2011, Student filed a Reply. As explained below, Student's Motion for Reconsideration is denied.

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.)

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.”

DISCUSSION AND ORDER

Student’s Motion for Reconsideration, and her Reply to District’s Opposition thereto, make no showing of new or different facts or circumstances justifying reconsideration. Student’s Reply asserts that her citation to additional legal authorities constitutes a showing of “new or different law” that justifies reconsideration. However, there has been no change in the relevant law since the Motion for Stay Put was denied. Student’s additional legal citations merely reargue and reiterate previously existing law that was already applied, adversely to Student’s position, when the Motion for Stay Put was first denied. Student’s citation to *Johnson v. Special Education Hearing Office* (9th Cir. 2002) 287 F.3d 1176, for the proposition that “stay put does not require maintenance of the same providers” is inapposite where, as here, stay put has been specifically agreed upon.

In the Motion for Reconsideration, as in the earlier Motion for Stay Put, Student seeks a significant modification of the stay put provisions of a settlement agreement that settled a prior case. Under the settlement agreement, District had no obligation to provide a school placement of any kind. Instead, the settlement agreement explicitly provided: “[T]he services described in paragraphs 5(a)(1), 5(a)(2), and 5(a)(3) shall constitute stay put in the event of a dispute for which stay put is at issue.” Paragraphs 5(a)(1), 5(a)(2), and 5(a)(3), in turn, provided for District to reimburse Parent up to one hour per week of speech therapy, one hour per week of occupational therapy, 15 hours per week of behavioral therapy, and six hours per month of behavioral therapy supervision. The speech and occupational therapy were each to be provided by a provider of Parent’s choosing, so long as it was either the Child Success Center or an agency certified by the California Department of Education (CDE) as a non-public agency (NPA). The behavioral therapy and behavioral therapy supervision were to be provided by a provider of Parent’s choosing, so long as it is certified by the CDE as an NPA. The reimbursement for these services was to be made within 45 days of Parent’s submission of invoices detailing the services provided, dates of service, exact amounts charged, that were marked “paid” and signed by the provider. Notably, under the terms of the settlement agreement, Parent was solely responsible for locating the providers of any services referenced in paragraph 5.

Student’s Motion for Stay Put sought, and the Motion for Reconsideration continues to seek, an order modifying these explicit stay put provisions of the settlement agreement, such that all the stay put services (speech therapy, occupational therapy and behavioral therapy services) may be provided not by the agreed upon providers (Child Success Center nor by a certified NPA), but instead by any available state licensed providers Student can

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

locate with immediate availability. Student also seeks to modify the reimbursement process agreed to by the parties in the settlement agreement to allow direct billing by the provider.

Student's reasons continue to be the same as previously asserted, that the Child Success Center is no longer available, and that all local NPA's have lengthy wait lists and cannot accept Student at this time. Student asserts that the single available agency is Pathways in Santa Monica, which is outside the terms of the settlement agreement because it is not an NPA.

As before, Student does not seek the agreed-upon stay put pending the resolution of this case, but seeks a significant modification of the parties' agreement pending that resolution. The law provides that 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); Ed. Code, § 56505 subd.(d) (italics added).) Thus, the law envisions that stay-put may be agreed upon, which here the parties have explicitly done. Stay put therefore would be the terms of the settlement agreement, using the providers there specified. Student's Motion for Reconsideration did not cite any changes in the relevant law since the Order Denying Motion for Stay Put was issued, nor provide any facts that were not known when the stay put motion was filed. Accordingly, the motion for reconsideration must be denied.

ORDER

The motion for reconsideration is denied.

Dated: June 17, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings