

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011091066

ORDER GRANTING REQUEST FOR
RECONSIDERATION AND
CLARIFICATION OF STAY PUT
ORDER AND DENYING MOTION
FOR SANCTIONS

On October 14, 2011, the undersigned administrative law judge issued a Stay Put Order in the above matter. On October 24, 2011, Santa Monica-Malibu Unified School District (District) filed a motion for reconsideration and clarification of the October 14, 2011 order. District sought clarification of two issues: (1) that the specialized academic instruction (SAI) minutes were 950 per week as agreed upon by the parties on September 26, 2011 not 150 minutes per day as set forth in the October 14, 2011 order and (2) the presence of a District aide in the classroom for transition purposes was permitted. On October 27, 2011, Parent on behalf of Student (Student) filed an opposition to District's motion for reconsideration and clarification, a motion of its own for reconsideration, and a motion for sanctions. In the opposition and motion, Student asserted that (1) District was required to continue to provide the same individual NPA aide and (2) was prohibited from having the District aide in the classroom as part of an overlap of services as part of a transition. Student acknowledged that the parties had agreed to 950 SAI minutes per week. On November 2, 2011, District filed a reply to the opposition asserting that not only was it not required to provide the same individual NPA aide, but it was entitled to have its own aide provide behavior services as part of an overlap of services during transition. In its reply, District asserted that a change in NPA aides was required based upon alleged inappropriate conduct by the NPA aide. On November 3, 2011, Student filed a reply to District's opposition to Student's motion.

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.) Here, although the ALJ believes the order is clear, both parties have requested reconsideration of aspects of the order, therefore, the order is reconsidered and clarified as follows.

DISCUSSION

As set forth in the October 14, 2011 stay put order, Student is entitled to an NPA aide for the entire school day and two hours per week of NPA behavior supervision. Neither the IEP nor the October 14, 2011 order provide for a particular NPA aide. The NPA and the District are entitled to staff the NPA aide position as they deem appropriate.

The October 14, 2011 stay put order does not provide for an overlap of services between an NPA aide and a District aide. Student's parent withdrew consent to the transition before filing of the due process complaint.¹ Accordingly, the District aide and a transition overlap are not part of Student's stay put.

The parties both agree that an IEP amendment on September 26, 2011, effectuated an increase in SAI minutes from 150 per day or 750 per week to 950 minutes per week. In light of these representations and stipulation, the stay put order will be amended to reflect the increase in SAI minutes as agreed upon.

Although the various filings by both parties reflect an apparent tension between the parties, the evidence does not demonstrate conduct warranting sanctions on the part of either attorney or party.

ORDER

1. The October 14, 2011 order is reconsidered and clarified as follows:
 - a. Student is entitled to 950 minutes per week of Specialized Academic Instruction.
 - b. Student is not entitled to a particular NPA aide.
 - c. District is not entitled to have its own behavior aide in the classroom or to continue with a transition of aide services from the NPA to the District.
2. Student's request for sanctions is denied.

Dated: November 8, 2011

/s/

GLYNDA B.GOMEZ
Administrative Law Judge I
Office of Administrative Hearings

¹ The ALJ specifically does not address whether the withdrawal of consent constitutes a breach of a settlement agreement.