

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT AND ALAMEDA COUNTY
BEHAVIORAL HEALTH CARE
SERVICES

OAH CASE NO. 2012040848

ORDER DENYING MOTION FOR
RECONSIDERATION

On April 20, 2012, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a due process request (complaint) and motion for stay put. On May 7, 2012, OAH issued an order granting Student's motion for stay put ordering Student to remain placed at the True Life Center/Journey High School (TLC).

Additionally, in its order, OAH directed that "in the event that Student is asked to leave True Life Center/Journey High School, the District will hold an IEP meeting to place Student in a residential treatment center which provides similar services as provided by True Life Center/Journey High School."

On May 16, 2012, Student filed a Request for an Order directing the District to hold an IEP Meeting in order for Student to be placed in a residential treatment center (RTC) which provides similar services as provided by TLC. This was because TLC would no longer serve Student after May 2012. On May 17, 2012, OAH granted Student's request and found as follows:

Having considered the parties' contentions and OAH's May 7, 2012 order, Student's motion for the District to conduct an IEP team meeting is GRANTED and the IEP team meeting shall be held ... in order to place Student in a residential treatment center which provides similar services as were provided by TLC.

Student has filed this instant motion for New and/or Further Stay Put, deemed to be a motion for reconsideration of OAH's May 7, and May 17, 2012 Orders based upon claimed new or different information or circumstances. In her motion, Student's contends that the parties are having some problems finding an acceptable RTC placement that provides similar services for Student. Thus, Student would like OAH to issue an order directing District to specifically place Student at Innercept, a non-certified RTC located in Idaho (Innercept). District opposed this request in its response filed on 6/25/2012.

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. (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." 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.)

In California, "specific educational placement" is defined 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. (Cal. Code Regs., tit. 5, § 3042.)

The 1999 federal regulations to the Individuals with Disabilities in Education Act (IDEA) state, "[I]t 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." (*Federal Register*, Comment on C.F.R., tit. 34 § 300.514, Vol. 64, No. 48, p. 12616.) The Comment to the current version of the federal regulation, C.F.R., title 34 § 300.518, is consistent and states: "The child's current placement is generally not considered to be location specific." In most instances, progression to the next grade adheres to the status quo for purposes of stay put. (See *Beth B. v. Van Clay*, 126 F. Supp.2d 532, 534 (N.D. Ill. 2000).) In *Van Scoy v. San Luis Coastal Unif. Sch. Dist.*, (C.D. Cal. 2005) 353 F.Supp.2d 1083, at 1086, the Court explained:

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

Courts have recognized, however, that because of changing circumstances the status quo cannot always be exactly replicated for the purposes of stay put. *Ms. S. ex rel. G. v. Vashon Island School District*, 337 F.3d 1115, 1133-35 (9th Cir. 2003). In the present case, the circumstances have changed because Matthew has moved from kindergarten into first grade, which includes additional time in the classroom. Certainly the purpose of the stay-put provision is not that students will be kept in the same grade during the pendency of the dispute. 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 the changed circumstances.

DISCUSSION

Student's request for placement at Innercept was first made in her initial motion for stay put dated April 20, 2012. OAH had considered this request, specifically in its Order dated May 7, 2012, which granted Student's Motion for Stay put.² Despite the specific request for placement at Innercept, OAH ordered that Student shall be placed either at TLC, or if TLC ceases to be a practicable stay put placement for Student, "in a residential treatment center which provides similar services as were provided by TLC". A review of the record at the current time fails to establish a need to disturb OAH's prior Order dated May 7, 2012, as clarified on May 17, 2012 regarding Student's stay put rights. The fact that the parties disagree about Student's stay put placement may be the subject of a new due process claim requiring an evidentiary hearing, but does not constitute new or changed circumstances to reconsider those Orders. Thus, as the May 7, 2012 OAH's Order granted Student's Motion for stay put, no additional ruling regarding Student's stay put rights is necessary or required at the present time.

Thus, the parties shall continue to implement OAH's May 7, 2012 Order, as clarified on May 17, 2012, regarding Student's stay put.

² The following was found in the order: "Student's last agreed upon IEP placed her in a residential treatment center (RTC), True Life Center/Journey High School (TLC) in Sebastopol, California. In her motion, Student states that "TLC has indicated that Student is aging out of their program and their residents may no longer be in Student's peer group." Student requests that OAH issue a stay put order requiring the District to continue Student's placement at TLC; or in the event that TLC will no longer permit Student to continue at TLC, the District be required to place Student at an RTC in Idaho, Innercept, which Student's mother has identified as being appropriate to meet her unique needs..."

ORDER

1. Student's motion for reconsideration is denied.

Dated: July 2, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings