

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL  
DISTRICT.

OAH CASE NO. 2012050089

ORDER GRANTING REQUEST FOR  
RECONSIDERATION AND  
GRANTING MOTION FOR STAY PUT  
IN ITS ENTIRETY

On May 2, 2012, Parent on behalf of Student (Student) filed a request for due process hearing (complaint) naming the San Dieguito Union High School District (District) as respondent. On May 2, 2012, Student filed a motion for stay put. Also on May 2, 2012, the District filed an opposition to the stay put motion as well as a Notice of Insufficiency. On May 2, 2012, OAH issued an order partially granting Student's motion for stay put. On May 3, 2012, the office of Administrative Hearings (OAH) issued an order determining the sufficiency of the complaint.

On May 4, 2012, Student filed a motion for reconsideration of OAH's May 2, 2012 order partially granting the motion for stay put and submitted documents in support of his position. On May 9, 2012, the District filed an opposition to Student's amended motion for stay put. Also on May 9, 2012, the undersigned issued an order (the Order) denying Student's motion for reconsideration. On May 15, 2012, Student filed a reply to the District's opposition to the amended motion for stay put. On May 15, 2012, OAH issued an order denying Student's amended motion for stay put on the grounds that the amended motion was effectively a submission of documents to support is motion for reconsideration. On May 17, 2012, Student filed a request for clarification, a request for reconsideration of the May 15, 2012 Order, and additional documents in support of Student's request for stay put as to placement. On May 17, 2012, OAH denied the request for reconsideration.

Parent's and Student's attorney filed a notice of representation on July 31, 2012. On August 30, 2012, the attorney on behalf of Student filed a motion for reconsideration of the May 2, 2012 stay put order as to the placement issue. The motion was accompanied by unauthenticated exhibits purporting to clarify Student's last agreed upon and implemented placement. District filed an opposition on August 29, 2012. District did not offer any evidence in support of its opposition, which contended that Student's request for reconsideration was untimely, or refuting the evidence offered by Student.

## 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)<sup>1</sup>; 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.)

## DISCUSSION

Although Student’s renewed motion for reconsideration of the Order partially granting stay put was filed nearly four months later, Student credibly argues that the circumstances justify reconsideration. The Order did not specify stay put placement based upon ambiguities in the original filing, which created a situation where Student was entitled to stay put for related services without identifying his placement. Student has recently retained counsel, who filed this motion less than 30 days after appearing in the matter. Because Student has now offered clear and credible evidence to support his claim for stay put, and because the Order left open the issue of Student’s stay put placement, Student’s motion for reconsideration is granted.

Regarding the motion for stay put, Student, with the assistance of counsel, has credibly established that, at the time the complaint was filed, Student was enrolled in one period of academic support at San Dieguito Academy (SDA) and was receiving five hours of home instruction daily. This placement was established via Student’s March 16, 2012 IEP, to which Parent consented and which District implemented. District has not disputed those facts in its opposition to the instant motion. Student previously established that District was implementing his March 3, 2011 IEP as to related services in the areas of occupational

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

therapy (OT), physical therapy (PT) and vision therapy (VT). District has also not refuted that fact in its opposition.

District's primary argument is that the motion for reconsideration is untimely and does not offer "new facts." Its argument is not persuasive, and it does not overcome the fact that Student is entitled to stay put under the Individuals with Disabilities Education Act if Student can clearly establish what the terms of his last agreed upon and implemented placement and services were. He has now met that burden. Accordingly, Student's motion for stay put is granted.

### ORDER

Student is entitled to stay put while this due process hearing request is pending as follows:

1. Placement shall be one period of academic support at San Diego Academy (SDA) and five hours of home instruction daily, as consented to by Mother on March 16, 2012.
2. Consistent with the undersigned's May 2, 2012 order partially granting stay put, District shall implement the OT, PT, and VT services offered in the March 3, 2011 IEP and consented to by Mother. The location of those services shall be at SDA or through a non-public agency if the services cannot be provided at SDA.

Dated: August 31, 2012

/s/  
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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings