

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WESTMINSTER SCHOOL DISTRICT.

OAH CASE NO. 2012060818

ORDER DENYING REQUEST FOR
RECONSIDERATION

On August 22, 2012, Student filed a second amended complaint (complaint) and included a motion for stay put, seeking placement at District's Sequoia Elementary School. Student did not file a copy of his last agreed upon and implemented individualized education program (IEP) or a declaration under penalty of perjury in support of his request for stay put. On August 27, 2012, attorneys for Westminster School District (District) filed an opposition to the motion for stay put, which was supported by a copy of Student's May 16, 2012 IEP and a declaration under penalty of perjury.

On August 28, 2012, the undersigned administrative law judge issued an order (Order) granting Student's motion for stay put. On August 31, 2012, District through its attorney filed a motion for reconsideration on District's behalf. OAH did not receive a response from 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.)

DISCUSSION AND ORDER

In Student's motion for stay put, the undersigned found that Student met his burden of establishing that his stay put placement was Sequoia Elementary School (Sequoia) with related supports and services as itemized in Student's May 16, 2012 individualized education program (IEP).

District alleges two bases for reconsideration. District first contends that it cannot comply with the Order because it discovered after the Order was issued that the program at

Sequoia Elementary School (“Sequoia”) is over-enrolled, and the effect of placing Student in that program may be to displace another Student. District then reasserts that Student’s stay put placement should be at his home school. As the undersigned noted in the Order, if one follows District’s logic, then such an order would effectively make moot the primary issue in the case, namely placement. How District implements the Order is irrelevant to the determination of what Student’s stay put should be. Accordingly, District’s first basis for reconsideration is not persuasive and is not based on any new relevant facts, circumstances or law that justifies reconsideration.

District next argues that the undersigned ALJ erroneously relied solely on what appears to be a typographical error in District’s May 16, 2012 individualized education program (IEP), thereby creating a “new issue” and erroneously determining Student’s stay put. District’s second basis for seeking reconsideration is also not persuasive, and adds no new law or facts justifying reconsideration. For clarification, evidence offered by *both* Student and District unequivocally established that Student’s last agreed upon and implemented placement prior Student’s filing of the complaint was Sequoia. As such, that evidence was the primary basis for the undersigned ALJ’s finding that Sequoia was Student’s stay put placement. (See Order, page 2, par. 2.)

District did not challenge the portion of the Order that sets forth the related services and supports.

Accordingly, because District offered no new relevant facts, circumstances or law in support of its motion for reconsideration, District’s motion is denied.

IT IS SO ORDERED.

Dated: September 5, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings