

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012080271

ORDER DENYING REQUEST FOR
RECONSIDERATION

On October 22, 2012, the undersigned administrative law judge issued an order (Order) granting Student's motion for reconsideration of an earlier order denying stay put, and granting Student's renewed request for stay put. On October 26, 2012, District's attorney filed a request for reconsideration of the Order. The motion is denied for the reasons discussed below.

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

District's motion for reconsideration argues that District did not have an opportunity to oppose Student's renewed request for stay put filed concurrently with his motion for reconsideration, which was the subject of the Order. District argues that District's counsel was reasonable in not anticipating that OAH would reconsider Student's renewed request for stay put at the same time as the undersigned granted the motion for reconsideration. Based upon its assumption, District's counsel elected to not address the merits of Student's renewed request for stay put that accompanied Student's motion for reconsideration.

This instant motion follows an extraordinarily long list of pre-hearing motions in this case, much of which involves Student's repeated requests for stay put. As noted in the Order, District had numerous prior opportunities to present its current position on the merits of stay put, and, if anything had changed, District's counsel should have addressed District's position on the merits when it opposed Student's request for reconsideration. Or, District's counsel could have requested OAH to grant it additional time to address the merits before

filing its opposition to the motion for reconsideration and renewed request for stay put. District's counsel chose not to, despite the fact that OAH has routinely concurrently addressed the merits of a motion if it grants reconsideration. Given the history of pre-hearing motions in this case, District's counsel's assumption that OAH would grant reconsideration, and condone further delays by allowing the parties to revert back to the October 2, 2012 Order was not reasonable.

More important, at page 6, line 18 of its motion for reconsideration, District acknowledges that Student's last agreed upon IEP was Student's January 31, 2012 IEP. District also admits that it is implementing the January 31, 2012 IEP.

Ignoring the findings in the Order addressing the disputed issue of "residence," District's attorney continues to argue that Student's stay put is dictated by Student's school of origin pursuant to the McKinney-Vento Act without citing to any supporting law. District further argues that OAH has no jurisdiction to decide stay put when a case is brought under the McKinney-Vento Act. However, District has offered no credible evidence, including a court order from the Superior Court, determining Student's current district of residence. Therefore, the merits of Student's case brought under the Individuals with Disabilities Education Act must be determined by the hearing ALJ after making evidentiary findings.

Accordingly, District has offered no new facts, circumstances or law justifying reconsideration of the Order granting stay put.

OAH will not entertain any further motions for reconsideration from District or Student on the issue of stay put absent compelling and credible evidence that there has been a change in facts that arose after the Order. District's motion for reconsideration is denied.

IT IS SO ORDERED.

Dated: October 29, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings