BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT/LEGAL GUARDIAN ON BEHALF OF STUDENT, v. ELK GROVE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015080687 ORDER DENYING REQUEST FOR RECONSIDERATION AND ORDER DENYING MOTION FOR STAY PUT

On August 17, 2015, Parent/Legal Guardian on behalf of Student filed a motion for stay put with the Office of Administrative Hearings. On August 20, 2015, Elk Grove Unified School District filed an opposition to the motion. On August 21, 2015, OAH denied Student's motion for stay put because Land Park Academy was no longer available because it determined that it could not meet Student's needs and informed District that it would not accept Student past the end of the 2014-2015 school year. The August 21, 2015 order provided that Student could file a subsequent motion for stay put if District's subsequent offer is not a comparable non-public school placement or that District has not made an offer.

On September 16, 2015, Student filed a motion for stay put, or in the alternative a motion for reconsideration. On September 22, 2015, District filed an opposition.

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); 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, 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 "current educational placement" for the purpose of stay put may also include services administered by the same non-public agency or non-public school if the most recently implemented IEP required the District to provide the services with a specific non-public agency or non-public school. (*Joshua A. v. Rocklin Unified Sch. Dist.* (E.D. Cal. August 20, 2007, No. CV 07-01057 LEW(KJMx)) 2007 WL 2389868, ** 2-4, affd. *Joshua A. v. Rocklin Unified Sch. Dist.* (9th Cir. 2009) 559 F.3d 1036 (*Joshua A.*).)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist*. (9th Cir. 2003) 337 F.3d 1115, 1133-35.) A student is not entitled to the identical services pursuant to his or her IEP when those services are no longer possible or practicable. (*Ibid.*, at pp. 1133-1134.) When a student's "current educational placement" becomes unavailable, the local educational agency must provide the student with a similar placement in the interim. (*See Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533.)

DISCUSSION

Reconsideration

Student alleges no new facts, circumstances, or law in support of the request for reconsideration that warrants this motion being granted. Student's reliance on *Student v. Paso Robles Joint Unified School District* (February 8, 2013) Cal.Offc.Admin.Hrngs, Case No. 2012090342, is misplaced as in that case the school district terminated the contract of the non-public agency to provide services, while in this matter the non-public school, not District, terminated services to Student. Further, nothing in Education Code, section 56366, or the applicable stay put statutes and regulations provide that a certified non-public school or non-public agency must retain a student if it terminates a contract to serve a student with the proper notice if the parent does not consent to the private service provider's contract termination. None of the other case authority cited by Student established that OAH has the legal authority to order Land Park Academy to retain Student during the pendency of this matter. Accordingly, Student's motion for reconsideration is denied.

Stay Put

Regarding Student's motion for stay put, Student asserts that District's offer of Point Quest Education is not comparable to Land Park Academy, or that District had not yet made such an offer in an IEP. On the same date Student filed this motion, District did hold an IEP

team meeting and formally offered Point Quest as District's first placement option, ABC, a non-public school, did not have an opening for Student. While Student did establish some differences between Land Park Academy and Point Quest, those differences are not significant enough to establish that Point Quest is not comparable to Land Park Academy, as the declaration of (redacted), establishes how Point Quest will implement Student's IEP so that she receives comparable services. Accordingly, Student's motion for stay put is denied.

ORDER

1. Student's motion for reconsideration is denied.

2. Student's motion for stay put is denied.

DATE: September 23, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings