

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

SALINAS CITY SCHOOL DISTRICT AND
COUNTY OF MONTEREY OFFICE OF
EDUCATION,

OAH CASE NO. 2010070257

COUNTY OF MONTEREY OFFICE OF
EDUCATION,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2010060753

ORDER DENYING REQUEST FOR
RECONSIDERATION AND AFFIRMING
ORDER GRANTING MOTION FOR
STAY PUT

On, June 18, 2010, the County of Monterey Office of Education (County) filed a Request for Due Process Hearing¹ (compliant) against Parents, on behalf of Student (Student).

On June 29, 2010, Student filed his response to County's complaint and made a motion for stay put. County filed a "non-opposition" response to Student's motion on July 2, 2010, opposing continued use of a non-public agency (NPA).

On July 7, 2010, the undersigned administrative law judge (ALJ) issued an order granting Student's request for stay put utilizing the services of the Central Coast Kids and Families (CCKF), an NPA, for "SCERTS" behavior services as provided for in Student's last agreed-upon and implemented individualized education program (IEP).

On July 14, 2010, County filed a motion for reconsideration of the order granting stay put. Student did not file a response to the motion.

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

APPLICABLE LAW

Stay Put

The law applicable to stay put was set forth in the July 7, 2010 order granting stay put. In general, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) 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.)

Reconsideration

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

As part of Student's June 4, 2009's last agreed-upon and implemented IEP, Student has received the "SCERTS" behavior services from the Central Coast Kids and Families (CCKF), an NPA. In his motion for stay put, Student sought an order requiring County to continue to contract with the CCKF to provide services to him. County had contended that CCKF is no longer "available" to provide services to Student and that County should be allowed to provide the SCERTS behavior services to Student through its staff. In the order granting stay put, OAH found that County did not provide any evidence supporting its contention that CCKF is no longer available to provide Student with behavior services. The ALJ indicated that the stay put order "can be reviewed if County has additional information that CCKF is not available and it needs to change Student[']s NPA provider."

County has provided no new or different facts, circumstances, or law justifying reconsideration in support of its request for reconsideration. The additional documents submitted by County, including the sworn declarations of Gail Yulich, Principal for the Autism Spectrum Disorder Program for County, Michele Saleh, Administrator for County's Special Education Programs, and Lolita Garcia, CCKF's Executive Director, offer no new or different facts, circumstances, or law that have not been provided before; that is, the assertion that CCKF is no longer willing to provide SCERTS behavior services to Student. CCKF's unwillingness to continue to serve Thus, County still has not established that continuing CCKF as the service provider to Student is now impossible or impracticable. (*Ms. S. ex rel.*

G. v. Vashon Island School District (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Therefore, County shall implement Student's June 4, 2009's last agreed-upon and implemented IEP pending the completion of this due process hearing.

ORDER

1. County's request for reconsideration is denied.
2. Order granting motion for stay put dated July 7, 2010 is affirmed. County shall implement Student's June 4, 2009's last agreed-upon and implemented IEP.

IT IS SO ORDERED.

Dated: July 16, 2010

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings