

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011080980

ORDER DENYING REQUEST FOR
RECONSIDERATION

On September 14, 2011, the undersigned administrative law judge issued an order denying Student's motion for stay put. On September 15, 2011, Laurene Brisnick, Attorney at Law, filed a motion for reconsideration on behalf of Student. On September 16, 2011, Daniel A. Osher, Attorney at Law, filed an opposition to Student's motion for reconsideration on behalf of the San Francisco Unified School District.

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

Student alleges no new facts or circumstances, but provides additional legal argument in support of the request reconsideration, as follows: Student argues that the September 14, 2011 order failed to consider 34 C.F.R § 300.5(d) and does not identify any stay put placement in violation of *Joshua A. V. Rocklin Sch. Dist.*, 559 F.3d 1036 (9th Cir. 2009)(*hereafter Joshua A.*).

34 C.F.R § 300.5(d) provides:

If the hearing officer in a due process hearing conducted by the SEA [state education agency] or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be

treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

In the instant case Student had no placement with this District or any local education agency at when the May 9, 2011 decision was issued; therefore, no change in placement could be ordered since no placement existed. Furthermore, as discussed in the September 14, 2011 order denying stay put, the May 9, 2011 decision did not order prospective placement of Student at Serra Preschool or Steps Therapy Inc., the placement that he now seeks as stay put, and thus, cannot be used as the basis for stay put. The May 9, 2011 decision only ordered reimbursement of costs incurred by Parents through the date of the decision. *Joshua A.* differs on its facts as the pupil in that case did have a placement prior to bringing his appeal. Furthermore, the pupil's placement was one agreed to and implemented pursuant to an individualized education program prior to the dispute arising.

Accordingly, Student's request for reconsideration is Denied.

IT IS SO ORDERED.

Dated: September 16, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings