

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAFAEL CITY SCHOOLS
ELEMENTARY SCHOOL DISTRICT.

OAH CASE NO. 2012100555

ORDER DENYING REQUEST FOR
RECONSIDERATION

On October 23, 2012, the undersigned administrative law judge issued an order granting Student’s motion for stay put placement in the Marin County Office of Education (MCOE) deaf and hard of hearing class for three to five year olds (MCOE 3-5 Program). On October 24, 2012, the San Rafael City Schools Elementary School District (District) filed a motion for reconsideration. On October 15, 2012, Student filed opposition to the motion.

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 is not based upon new or different facts, but on an assertion that the administrative law judge (ALJ) “ignored relevant law and facts” in the opposition originally filed. In fact, District’s motion for reconsideration simply repeats the arguments already made in District’s opposition and asserts that the wrong conclusion was reached by the ALJ. The declaration of Amy Baer, District’s director of student support services, contains no new facts concerning Student, his individualized education programs (IEPs), the composition of MCOE’s preschool program for infants to three years of age (MCOE 0-3 Program) attended by Student, the MCOE 3-5 Program asserted by Student to maintain the status quo, or Student’s signing peers in either program. Rather, Ms. Baer’s declaration provides irrelevant information on the placement of other deaf and hard of hearing students in the District over a

three year period, none of whom appear to be Student's signing peers.¹ District has failed to make a showing of new or different facts, circumstances, or law justifying reconsideration of Student's stay put order.

Even were Ms. Baer's declaration to contain new facts relevant to maintaining the status quo for Student pending a due process hearing, District's motion for reconsideration would be denied for lack of an explanation for District's failure to previously provide different facts, circumstances or law. The "new" facts contained in the declaration address points raised in Student's motion for stay put and reply. District already had an opportunity to address those points in its surreply, filed October 22, 2012 and considered in the ruling on the original stay put motion.

And, even if Ms. Baer's declaration regarding placement of other District deaf and hard of hearing students over the past three years contained new and relevant facts, which it does not, Student's motion for stay put would still be granted on the merits. There was never any dispute that the MCOE 0-3 Program and MCOE 3-5 Program were separate programs. District's past placement of three deaf and hard of hearing students in a variety of preschool programs, including the MCOE 3-5 Program, after they aged out of the MCOE 0-3 Program fails to address the status quo for Student. Student established that his current agreed upon and implemented IEP placed him in the MCOE 0-3 Program where his mode of communication was English via Total Communication using Sign Exact English (SEE), that his same age signing peers had advanced to the MCOE 3-5 program, and that there was space for him in the MCOE 3-5 Program. At the MCOE 3-5 Program, Student could continue working on his current goals, six of ten of which require Student to use SEE, and communicate with signing staff and peers using SEE, maintaining the status quo under Student's current IEP pending a due process hearing challenging District's offer of placement in an oral, English language learner program.

District alleges no new facts, circumstances, or law in support of the motion for reconsideration, and the motion is denied. Because there was no reconsideration, Student's opposition on the merits was not considered.

IT IS SO ORDERED.

Dated: October 25, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

¹ The declaration contains no mention of whether the students communicated with SEE or other sign language as their primary mode of communication.