

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CAMBRIAN ELEMENTARY SCHOOL
DISTRICT,

v.

PARENT on behalf of STUDENT.

PARENT on behalf of STUDENT,

v.

CAMBRIAN ELEMENTARY SCHOOL
DISTRICT

OAH CASE NO. 2009080375

CASE NO. 2009090090

ORDER DENYING MOTION FOR
STAY PUT

On August 28, 2009, Student filed a motion for stay put. On September 2, 2009, the District filed an opposition to Student's stay put motion. On September 8, 2009, Student filed a reply to the District's opposition to the motion for stay put.

APPLICABLE LAW

Under federal and California special education law, 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).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school (34 C.F.R. § 300.137(a) (2006).)

DISCUSSION

Parents contend that Student's IEP fails to provide Student a FAPE for a variety of reasons which are the subject of the due process complaints in these consolidated matters. On August 7, 2009, Student's parents provided the District with written notice of their intent to unilaterally place Student at Arbor Bay School for the 2009-2010 school year, as well as their intent to seek reimbursement from the District for such placement. On August 28, 2009, Student filed his cross-complaint and requested stay put consisting of 22 hours per week of ABA services provided by Enriching Lives of Children with Autism (ELCA) to be provided to Student at his unilateral placement site of Arbor Bay School. The District contends that unilateral placement by parents and stay put are mutually excluded concepts. One may unilaterally place a child or one may request stay put. The District contends that stay put would include the services requested by Student, but in a public school placement, not in a unilateral private placement as optioned by parents.

The District's position in this matter prevails. Student provided written notice of his intent to be unilaterally placed at Arbor Bay School. The unilateral selection of Arbor Bay qualifies as a private placement by parents and is subject to Title 34 of the Code of Federal Regulations, section 300.137(a). As such the stay put provisions of the IDEA do not apply, and the District is not required to provide services to Student while privately placed by his parents. Certainly Student is not precluded from his reimbursement claims, however, reimbursement is determined pursuant evidentiary hearing, and not as a component of stay put.

ORDER

Student's request for stay put is denied.

Dated: September 15, 2009

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings