

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

MORENO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009090471

ORDER DENYING MOTION FOR
STAY PUT

On September 10, 2009, Student filed a request for mediation and due process hearing (Complaint) and a motion for stay put. District has not filed an opposition to Student's stay put motion.

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.)

California Code of Regulations, title 5, section 3042, defines "educational placement" 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.

DISCUSSION

In this case, District held an initial IEP on September 26, 2007, and the IEP team found Student not to be eligible for special education services. Student has attended regular education classes since then. In August 2009, Student attended first grade at La Jolla Elementary School ("La Jolla"), Student's home school. After a short period of time in this class, Parent requested that District move Student to another first grade classroom at La Jolla.

In a September 3, 2009 letter, District suggested that Student be “overflowed” to a different school. On September 10, 2009, Student filed the Complaint and proposed that District permit her to remain at her home school and move her to another classroom.

By filing this motion, Student requests that she be able to remain at her home school pending the completion of the due process hearing. Because Student was found ineligible for special education, there is no agreed upon and implemented IEP upon which a stay put can be based. Thus, Student is not entitled to Stay Put.

ORDER

Petitioner’s Motion for Stay Put is denied.

Dated: September 21, 2009

/s/

CLARA SLIFKIN
Administrative Law Judge
Office of Administrative Hearings