

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ROSEVILLE JOINT UNION HIGH  
SCHOOL DISTRICT .

OAH CASE NO. 2009100131

ORDER GRANTING MOTION FOR  
STAY PUT

On October 22, 2009, Christian M. Knox, attorney for Student filed a motion for stay put. On October 29, 2009, Heather M. Edwards, attorney for Roseville Joint Union High School District (District), 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; *Zvi 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 last Individualized Education Program (IEP) that has been agreed upon and 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.

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64; *Zvi D. v. Ambach* (2nd Cir. 1989) 904, 907.)

DISCUSSION

Student asserts that her last agreed upon and implemented placement is home/hospital instruction, pursuant to an IEP dated February 22, 2008. Student has provided a copy of the IEP. Student alleges that since October 2008, she has not received any educational services. District does not dispute this.

District does not dispute that the February 22, 2008, IEP is the last agreed upon and implemented IEP. However, District asserts that the home/hospital instruction was a temporary placement, set to expire on October 26, 2008. For this date, District refers to the IEP generally. District further asserts that the temporary nature of the placement can be determined from a statement in the IEP that “the team would meet again or amend the IEP in the Spring to, among other things, ‘look at an appropriate placement.’” District asserts that upon termination of the temporary placement, Student’s placement is Challenge High School (CHS).

A review of the February 22, 2008, IEP shows that the purpose of the meeting was to discuss Student’s mental health assessment, and to discuss her eligibility for mental health services. Multiple notations in the IEP show that, at the time of the meeting, Student was already placed in home/hospital instruction. Therefore, the purpose of the IEP was not to determine a temporary placement. The document also notes that “Student has not attended CHS.” The IEP states that the parties would meet or amend the IEP in the Spring of 2008 to review academic testing and look at appropriate placement. None of these statements indicate that the placement in home/hospital was intended to be a temporary placement. They indicate that the home/hospital placement was Student’s placement until another appropriate placement was determined.

The District’s reliance on October 26, 2008, as an end date is misplaced. The references to October 26, 2008, are consistent with the requirement that services have a start and end date. October 26, 2008, is Student’s annual IEP anniversary date. Finally, District states that it is mandated to meet and reconsider the projected calendar end date for home/hospital, which is supposed to be stated in the physician’s initiating recommendation. However, District has failed to show evidence that Student’s physician set October 26, 2008, as the end date for home/hospital instruction.

Student’s motion for stay put is granted.

#### ORDER

District is ordered to provide Student with home/hospital instruction consistent with the February 22, 2008, IEP.

Dated: October 30, 2009

/s/

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BOB VARMA  
Administrative Law Judge  
Office of Administrative Hearings