

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

FULLERTON JOINT UNION HIGH
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010070678

ORDER GRANTING MOTION FOR
STAY PUT

On, July 14, 2010, Karen E. Gilyard, attorney for the Fullerton Joint Union High School District (District), filed concurrently a Request for Due Process Hearing¹ (complaint) against Parent, on behalf of Student (Student), and a motion for stay put. Student did not file a response to the motion.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, 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).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student’s individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

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.)

In California, “specific educational placement” is defined 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. (Cal. Code Regs., tit. 5, § 3042.)

DISCUSSION

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

Student is a 15-year-old female who was found eligible for special education under the criteria of emotional disturbance. Student transferred into District in June 2009, with an IEP from her former district that had placed her at Cinnamon Hills Youth Crisis Center (Cinnamon Hills), a residential treatment center in St. George, Utah, where she had been placed since September 2008.

According to Student's last agreed-upon and implemented IEP with District dated November 2, 2009, Student continued to be placed at Cinnamon Hills. On or about May 7, 2010, Parent unilaterally removed Student from Cinnamon Hills and took her home.

On May 14, 2010, District convened another IEP team meeting. Orange County Health Care Agency (OCHCA) attended the meeting and offered to place Student in Day Star/Shiloh Treatment Center, Inc. (Day Star), a residential treatment center located in Manvel, Texas. District agreed that Student required residential treatment in order to benefit from her educational services and agreed with the proposed placement at Day Star.

Parent attended the IEP meeting of May 14, 2010, but did not consent to the IEP or proposed placement at in Day Star. Parent also has not returned Student to Cinnamon Hills.

District has asked that OAH designate Cinnamon Hills as Student's stay put placement during the pendency of these proceedings. A student's stay put placement is that which is designated in the last IEP that was agreed to by Parent and implemented by the student's current school district. An order for stay put is generally not required unless a dispute over placement exists. Here, Parent disputes Student's placement. The November 2, 2009, IEP was the last agreed-upon IEP implemented prior to the dispute. As such, it remains, for the purposes of stay put, Student's current educational placement. The District must, therefore, maintain the status quo of Student's educational program, and continue to offer Student the placement and services set forth in Student's November 2, 2009, IEP.

ORDER

The District's motion for stay put is granted. Student's operative placement for the purposes of stay put is Cinnamon Hills, as designated in the November 2, 2009, IEP.

Dated: July 22, 2010

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings