

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011071057

ORDER GRANTING WITHDRAWAL  
OF MOTION FOR STAY PUT

On July 27, 2011, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming San Francisco Unified School District (District). On July 29, 2011, District filed an opposition to Student's motion for stay put. On August 2, 2011, Student filed a letter in response to District's opposition to the motion for stay put. Student stated that he had not yet filed a motion for stay put and requested that the Office of Administrative Hearings (OAH) refrain from ruling on the issue until such time as a motion is filed. District responded on August 2, 2011, stating that Student requested stay put in his complaint and requested OAH rule on the issue.

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, § 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.)

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.)

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<sup>1</sup> 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).

## DISCUSSION

Student's complaint includes a request for an order requiring Student to remain in his present educational placement during the pendency of the due process proceeding. This is reasonably interpreted to be a motion for stay put. However, Student's subsequent letter on August 2, 2011, asserts that he has not yet filed a motion for stay put and requests that OAH refrain from ruling on the issue. OAH considers Student's letter on August 2, 2011, to be a request to withdraw his motion for a ruling on the issue of stay put.

Student is entitled to remain in his last agreed upon and implemented placement while a dispute is pending and an order for stay put is generally not required unless a dispute over placement exists. Here, Student has in effect withdrawn his request for an order to resolve a dispute as to Student's placement and services while the case is pending. If there is a dispute that exists as to that placement, Student may file a request for stay put with more specificity as to the nature of the dispute and the terms of stay put. Accordingly, Student's request to withdraw his motion for stay put is granted and the issue of stay put is not ripe for adjudication.

## ORDER

Student's motion for stay put is withdrawn.

Dated: August 15, 2011

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings