

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

UNION SCHOOL DISTRICT.

OAH CASE NO. 2011081094

ORDER DENYING MOTION FOR
STAY PUT

On September 1, 2011, Student filed a motion for stay put (motion). On September 7, 2011, District filed an opposition to the motion on the ground that Student is not entitled to stay put protections because he is not a special education student receiving special education services.

APPLICABLE LAW

Under the Individuals with Disabilities in Education Act (IDEA), 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)¹; 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 the case of a removal from placement due to a disciplinary action, stay put protections may apply to a student who is not yet found eligible for special education services, if the student has engaged in behavior that violated a rule or code of conduct of the local educational agency (LEA), and the LEA is deemed to have had a basis of knowledge that the student suffered from a disability before the occurrence of the behavior that prompted the disciplinary action. (20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).) There is no similar provision for students who have not yet been found eligible for special education services but do not claim that they have been removed for disciplinary reasons.

DISCUSSION

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

In Student's motion, Student admits that he does not have an IEP plan under the IDEA. However, he contends that he is entitled to stay put protections and must be allowed to remain in his current placement pursuant to his Section 504 plan.² For the following reasons, Student argument is not persuasive.

As provided above under applicable law, a special education student is entitled to remain in his or her current educational placement until due process hearing procedures are complete, unless the parties agree otherwise. For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP that has been implemented prior to the dispute arising. Here, Student admits that he is not currently a special education Student and he does not have an IEP. Thus, Student fails to show that he is entitled to stay put.

Further, as discussed above, stay put protections may be available to a student who is not yet found eligible for special education services under certain circumstances, when such student is being removed from his/her placement by a district as a result of a disciplinary action. Student has not alleged or presented any evidence to show that the current placement dispute with District is a result of disciplinary action or removal.

Therefore, based on the foregoing, Student motion for stay put is denied without prejudice. Student may provide additional information showing that he is entitled to stay put protection under the IDEA.

ORDER

Student motion for stay put is denied without prejudice.

Dated: September 09, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

² The Office of Administrative Hearings does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 of the United States Code, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.).