

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL  
DISTRICT.

OAH CASE NO. 2011090356

ORDER DENYING MOTION FOR  
STAY PUT

On September 12, 2011, Student filed a motion for stay put. On September 15, 2011, District filed an opposition. As discussed below, the motion is denied.

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.)

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

Student contends that his stay put placement should be a nonpublic school (NPS) that he has been attending at District expense pursuant to a settlement agreement (SA) dated

November 30, 2010. The SA explicitly states that the NPS shall not constitute Student's stay put and that District shall fund no more than 144 days at the NPS.

The SA contemplated that an IEP meeting would be held in May 2011 to address Student's placement for the current 2011-2012 school year. Student contends that this contemplated IEP meeting did not occur, that District has made no offer of a free appropriate public education (FAPE) for 2011-2012, and that he is therefore entitled to a continuation of the NPS as his stay put placement.

However, Student's motion fails because the SA explicitly states that the NPS shall not constitute Student's stay put placement, and that District's funding of the NPS shall be temporary, not to exceed 144 days. Notwithstanding the non-occurrence of the contemplated May 2011 IEP meeting, the NPS does not constitute Student's stay put placement. Therefore the motion is denied.

#### ORDER

Student's motion for stay put is denied.

Dated: September 16, 2011

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings