

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST COVINA UNIFIED SCHOOL
DISTRICT AND CALIFORNIA VIRTUAL
ACADEMY

OAH CASE NO. 2011090455

ORDER GRANTING MOTION FOR
STAY PUT

On September 12, 2011, Student filed a motion for stay put (Motion).¹ Neither the West Covina Unified School District nor the California Virtual Academy filed 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)²; 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.)

¹ In Student's motion for stay put, the Parent appears to include a request for stay put for another child other than Student. If the Parent intends to assert another child's stay put right, a separate request for due process hearing must be filed for that child, with such additional request for stay put as necessary.

² All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

DISCUSSION

Student is correct in asserting, and thus requesting, that his “most recently implemented” IEP should be deemed his stay put placement during the pendency of the current due process hearing proceedings.

In support of his motion, Student provided his last agreed upon and implemented IEP dated August 17, 2011 IEP. While the August 17, 2011 IEP placed the Student in a general education program in a public day school and specifically in a charter school operated by District, Student’s identified placement in the IEP document was the California Virtual Academy, a general education “full inclusion independent study program.” He would receive regular education academic instruction with resource specialist program instructions in math and language arts.

Based on the available record therefore, Student’s last agreed upon and implemented IEP is the August 17, 2011 IEP, and Student is entitled to the placement, supports and services offered to him in that IEP during the pendency of the current due process proceeding. Accordingly, Student’s motion for stay put is granted.

ORDER

Student motion for stay put is granted

Dated: September 22, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings