

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011090696

ORDER DENYING MOTION FOR  
STAY PUT

On September 20, 2011, Student filed a motion for stay put as part of his Due Process Hearing Request (complaint). Student asserted that his stay put should be based upon his May 3, 2010 individualized education program (IEP), but failed to enclose a copy of the IEP with his complaint.

On September 27, 2011, District filed an opposition on the ground that Student's last IEP was dated April 20, 2011 and asserted that Student's Motion for Stay Put based upon the May 3, 2010 should be denied.

On September 28, 2011, the undersigned administrative law judge issued an order for supplemental briefing by the parties on the stay put. On October 3, 2011, an amended order for supplemental briefing was issued.

On October 5, 2011, Student filed a supplemental brief agreeing that the April 20, 2011 IEP was the last agreed upon and implemented IEP, and not the May 3, 2010 IEP as pled in his complaint.

On October 5, 2011, District filed a supplemental brief with five attached declarations attesting that the April 20, 2011 IEP was the last agreed upon and implemented IEP.

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)<sup>1</sup>; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational

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

placement is typically the placement called for in the student's 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.)

#### DISCUSSION

District has stated in its response to Student’s Motion for Stay Put that it agrees to continue providing services within Student’s current educational placement as articulated in Students April 20, 2011 IEP. In his supplemental briefing, Student concedes that the April 20, 2011 IEP is the last agreed upon and implemented IEP.

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, District has agreed to provide Student a placement consistent with his last agreed upon and implemented IEP. 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. The motion for stay put is denied.

#### ORDER

Student’s Motion for Stay Put is denied.

Dated: October 7, 2011

/s/

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MICHAEL G. BARTH  
Administrative Law Judge  
Office of Administrative Hearings