

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011100526

v.

MORGAN HILL UNIFIED SCHOOL
DISTRICT,

MORGAN HILL UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2011061147

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING MOTION FOR STAY
PUT

On October 14, 2011, Student filed a motion for stay put, asking that Parents be reimbursed for transportation costs to and from Stanbridge Academy (Stanbridge) for the 2010-2011 school year, and the 2011-2012 school year.¹ The District filed opposition on October 19, 2011, and Student responded to that opposition on the same date.

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.)

¹ Student's motion for stay put also contains a request for sanctions which will be addressed in a separate order.

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

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 has attended Stanbridge, a private school that has not been certified by the California Department of Education, for the past five years. In February 2010, the parties executed a settlement agreement to resolve a dispute concerning Student’s educational placement. The District agreed to pay Student’s tuition at Stanbridge until an IEP team meeting was held, and Parents agreed to assume the cost of transporting Student to and from Stanbridge. The IEP team meeting was to be held no later than June 12, 2010.

An IEP team meeting was held on June 10, 2010. The parties agreed that Student would continue to attend Stanbridge for the 2010-2011 school year. However, the IEP is silent about transportation. In June 2011, however, the District offered to place Student in a District school. On June 24, 2011, the District filed a request for due process hearing and mediation, OAH Case No. 20110611, asking that OAH find that its offer to place Student in a District school was an offer of a free appropriate public education (FAPE). The parties then filed respective motions for stay put in July 2011, the District asking that its offer of placement in a District school in June 2011, be found to be Student’s stay put placement, and Student asking that Stanbridge be found to be his stay put placement. On August 4, 2011, Administrative Law Judge (ALJ) Ayoade granted Student’s motion for stay put and denied the District’s motion. Both parties’ motions for stay put, and Student’s opposition to the District’s motion, are silent as to who is responsible for the costs of transporting Student to and from Stanbridge.

In his current motion for stay put, Student is now asking that the District be ordered to reimburse Parents \$11,167.43 for transportation costs incurred during the 2010-2011 school year, and \$1,866.50, for transportation costs incurred through September 30, 2011. He is also asking that the District be ordered to reimburse Parents for ongoing transportation costs during the pendency of these proceedings. The District opposes this motion.

The settlement agreement of February 14, 2010, was implemented by the parties, and this agreement required Parents to bear the costs of transporting Student to and from Stanbridge. The IEP of June 10, 2010, continued Student’s placement at Stanbridge for the 2010-2011 school year, but was silent as to transportation. However, Parents did not seek reimbursement for transportation during that school year, nor did the District reimburse them for transportation that school year. Accordingly, although Student may have a claim for reimbursement for transportation costs that can be addressed at the due process hearing in this consolidated matter, assuming the claim is contained in the complaint, stay put is not applicable and Student’s motion is denied without prejudice.

ORDER

Student's stay put motion for reimbursement of transportation costs is denied.

Dated: October 31, 2011

/s/

REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings