

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO UNION HIGH SCHOOL  
DISTRICT.

OAH CASE NO. 2012030457

ORDER GRANTING MOTION FOR  
STAY PUT

On March 14, 2012, Student filed a motion for stay put which was supported by sworn declarations from Student's parents (Parents) and authenticated exhibits. On March 16, 2012, District filed an opposition, also supported by a sworn declaration from District's County Counsel and authenticated exhibits. District's motion is made on the grounds that Student's motion is moot because his placement has not changed, and that the Office of Administrative Hearings has no jurisdiction to order Student's placement at a private, non-certified school, as Student has requested. Student filed a reply brief on March 19, 2012. For the reasons discussed below, Student's motion is granted.

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 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.)

DISCUSSION AND ORDER

Student and District disagree as to which IEP document constitutes Student's last implemented IEP. Student contends that his May 13, 2011 IEP, which was signed by both Parents, is the last signed and implemented IEP. It provides for placement at District's expense through direct pay at Stanbridge Academy (Stanbridge), a non-certified private school. District contends that a September 20, 2011 IEP, signed only by Student's mother (Mother), is the last agreed upon IEP. The September 20, 2011 IEP provides for placement at Stanbridge, but changes the manner in which Student's tuition would be paid by District

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

from direct payment to reimbursement to parents. Student contends that District has not paid Student's tuition for the 2011-2012 school year, and, as a result, Stanbridge has notified him that he may not return to school after March 30, 2012 unless full tuition is paid.

The evidence established that Student has attended Stanbridge at District's expense under successive IEPs for the past several years. He has also attended the school since the beginning of the 2011-2012 school year, pursuant to the May 2011 IEP and the September 20, 2011 IEP. Although the parties dispute whether the September 2011 IEP is valid, Mother signed and agreed to implement the September 20, 2011 IEP. Therefore, *for purposes of stay put only*, the September 20, 2011 IEP is Student's last agreed upon and implemented IEP.

District argues that, because Stanbridge is not a certified private school, OAH may "not render a decision that results in the placement of a special education student in a nonpublic, nonsectarian school, or ... nonpublic, nonsectarian agency, if the school or agency has not been certified pursuant to Section 56366.1." District's argument is not persuasive. OAH's order granting Student's motion for stay put merely ensures that the status quo is maintained during the pendency of Student's due process hearing request as required by law. Granting Student's motion for stay put would not result in a new placement for Student as a result of a decision, but instead maintains the status quo current placement that was the result of a decision by District.

Pursuant to the IDEA, because Student is entitled to remain in his current educational placement until due process hearing procedures are complete, Stanbridge is the stay put for Student, under the terms of the September 20, 2011 IEP. Nothing in this Order is intended to be a determination of the validity of the September 20, 2011 IEP, or of the issue of whether District may prospectively be ordered to place Student at Stanbridge at public expense. Those issues must be decided by the hearing ALJ.

IT IS SO ORDERED.

Dated: March 21, 2012

/s/

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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings