

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012080271

ORDER DENYING MOTION FOR
STAY PUT

On September 21, 2012, Student’s father filed a request for due process hearing and mediation, which included a request for stay put. The stay put request was not supported by any evidence, such as a copy of Student’s last agreed upon individualized education program (IEP). On October 1, 2012, District filed an opposition, supported by a declaration under penalty of perjury from its attorney, which also did not establish what the terms of Student’s stay put should be. On October 2, 2012, the undersigned Administrative Law Judge (ALJ) issued an Order compelling the parties to submit additional evidence, including a copy of the last agreed upon IEP, establishing what the terms of stay put should be.

On October 9, 2012, Student’s advocate filed a notice of representation, and a declaration reiterating circumstances relating to Student’s residence. However, Student did not comply with the October 2, 2012 Order by providing a copy of the last agreed upon IEP, or any evidence establishing what placement and services should be.

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.)

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.)

Here, Student was offered two opportunities to demonstrate what the stay put placement should be, both in Student's original request, and following OAH's request for additional information. Having not provided the information from which Student's stay put placement could be determined, Student has not met his burden of establishing what the terms of stay put should be. Accordingly, his motion for stay put is denied.

IT IS SO ORDERED.

Dated: October 10, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings