

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014090191

ORDER DENYING MOTION FOR
STAY PUT ON FOOTBALL TEAM

On September 10, 2014, Student filed a motion for stay put on the football team. District did not file any response to Student's 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)¹; 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.)

To comply with the IDEA with respect to nonacademic services, a district must “take steps . . . to provide nonacademic and extracurricular services and activities [including athletics] in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.” (34 C.F.R. § 300.107(a), (b).) However, under similar requirements applicable to the provision of nonacademic services under Section 504 of the Rehabilitation Act of 1973 (see, for example, 34 C.F.R. § 104.37(a) (2000)), the United States Department of Education, Office for Civil Rights, has held that an academic or attendance eligibility requirement does not violate the law as long the

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

requirement is uniformly applied to students with and without disabilities, and students with disabilities have an equal opportunity to participate in the athletics program. See *Susquehanna Twp. (PA) Sch. Dist.*, 20 IDELR 35 (OCR 1993) (where student's grade point average had fallen below the acceptable standard and student had been absent for more than the allotted number of days, district had properly prohibited the student from participating in the interscholastic sports program because district did not treat student differently than other students who did not meet the eligibility requirements).

DISCUSSION

Student's last agreed-upon and implemented IEP is the April 2, 2013 IEP, which Parent signed on April 9, 2013. Student alleges that he has been denied eligibility for football because his grades are too low. Student does not dispute that his grades make him ineligible for football, and in fact Student relies on his extremely low grades to support his claim that District has denied him a FAPE at all times since the fall semester of 2012. Although the IEP contains references to Student having "a passion for football" and being enrolled in Body Building to prepare for football in 2013, the IEP does not "place" Student in football or in any way, explicitly or implicitly, exempt him from the academic or attendance eligibility requirements for participation in football, which apply equally to students with and without disabilities. Although Student contends it is District's prolonged denial of FAPE that has rendered him ineligible for football, Student has established no right to participate in football when participation in football was not an express component of his FAPE and when he does not meet the academic requirements applicable to all students for participation in extracurricular athletics.

ORDER

1. Student's motion for stay put on the football team is denied.
2. This order does not affect any claims Student asserted in his complaint regarding District's alleged denial of FAPE between September 5, 2012 and September 5, 2014.

DATE: September 15, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings