

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. WHITTIER CITY SCHOOL DISTRICT,	OAH Case No. 2015020710
WHITTIER CITY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015030328 ORDER GRANTING MOTION FOR STAY PUT

On July 29, 2015, Student filed a motion for stay put, supported by declarations under penalty of perjury and authenticated evidence. On August 4, 2015, District filed an opposition, which was not supported by a declaration under penalty of perjury, but attached unauthenticated exhibits. For the reasons discussed below, the 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)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, 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.)

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

DISCUSSION

Student's first amended complaint alleges violations of Federal and state discrimination statutes; and that District denied Student a free appropriate public education by: failing to find him eligible for special education before February 2015; removing him from his general education classroom for three weeks during his initial assessments; conducting an inappropriate psychoeducational assessment; failing to offer a FAPE, including extended school year, at the February 3, 2015 IEP team meeting; denying Parents the opportunity to meaningfully participate in the development of Student's educational program; and failing to hold an IEP review meeting at the end of the 2014-2015 school year.

The parties do not dispute the following facts for purposes of this motion. At the time District found Student eligible for special education, Student was enrolled at District on an inter-district permit; Parents resided in the Hacienda La Puente Unified School District. At the February 3, 2015 IEP meeting, District developed an IEP for Student, which included services and supports in a general education classroom. The IEP provided that Student must return to his home school, a placement with which Parents disagreed. District revoked Student's inter-district permit after the IEP meeting. District later rescinded its revocation of the permit and agreed to allow Student to remain in District's Andrews Elementary School until the end of the 2014-2015 school year, implementing the February 3, 2015 IEP. District's rescission of its revocation is documented in a letter from District's attorney to Student's attorney, which states: "He may remain at Andrew's [sic] Elementary School for the remainder of the 2014/2015 school year. [Student's] IEP dated February 3, 2015, will continue to be implemented, including the Behavior Intervention Plan."

In his motion for stay put, Student argues that his placement is at issue, and therefore he is entitled to stay put, on the ground that he is entitled to remain at Andrews Elementary pending resolution of the due process claims; his educational program cannot be replicated at his school of residence, in part because Student requires the assistance of his "current instructional aide" to implement his IEP; if he were forced to attend his school of residence Parents would have to find a new childcare provider within his district of residence resulting in a disruption of his schedule; and District's revocation of Student's inter-district permit was a pretext for removing Student from his current educational setting. Student contends that, based on the "suspicion of bad faith" revocation of the inter-district permit, he is entitled to stay put.²

² This Order does not address the merits of Student's arguments or determine the issues for hearing.

District argues that: Parents are not a residents of District and Student is therefore not entitled to stay put; the basis for revocation and status of Student's inter-district transfer permit is a separate issue not before OAH in Student's complaint; Student's district of residence can fully implement Student's IEP; and District is not obligated to grant him an inter-district transfer solely because Parents claim he requires the assistance of a particular District staff member.

The parties both cited to prior OAH decisions. OAH decisions are not binding precedent, but may be persuasive authority. (Cal. Code Regs., tit. 5, § 3085.) In *Student v. Cotati-Rohnert Park Unified Sch. Dist.* (April 28, 2006) OAH Case No. 2006040319, relied upon by District, OAH denied student's motion for stay put because there had never been an agreed upon, implemented IEP. The case is distinguishable because, here, District participated in the development of and implemented Student's IEP dated February 3, 2015. Additionally, prior to finding him eligible for special education, District provided Student with placement at Andrews Elementary through the inter-district transfer process, and affirmed the continued placement at Andrews Elementary when it agreed to rescind its revocation of the inter-district transfer, allowing Student to finish the 2014-2015 school year at Andrews Elementary.

OAH has previously granted stay put although the placement was initially procured by inter-district transfer and the district subsequently revoked the permit (*Student v. Fremont Unified School District and New Haven Unified School District* (June 21, 2010) OAH Case No. 2010060313). Other administrative rulings have found that stay put can be ordered even if the placement was initially procured through an inter-district transfer. (*Snohomish Sch. Dist.* 106 LRP 12019 (Was. SEA Oct. 24, 2005) (ordering school district to assist in the enrollment process at another school through the inter-district transfer process as part of stay put); *Great Meadows Regional Bd. of Educ.* 47 IDELR 274 (NJ SEA Oct. 12, 2006) (ordering maintenance of stay put despite expiration of the inter-district transfer); *Monrovia Unified Sch. Dist.* 102 LRP 10082 (Cal. SEA Aug. 30, 2001) (ordering maintenance of stay put despite expiration of the inter-district transfer).) These authorities are persuasive. The unequivocal language of title 20 United States Code section 1415(j) guarantees that a student shall remain in his or her then current placement during the pendency of a dispute. (*Honig v. Doe* (1988) 484 U.S. 305, 329 [108 S.Ct. 592, 98 L.Ed.2d 686].) The purpose of stay put is to prevent school districts from unilaterally denying placement to a student while the parties are litigating the very issue of placement. (*Id.* at p. 426.) Here, placement is at issue in the appropriateness of the February 3, 2015 IEP offer.

The principle of stay put exists to prevent a school district from utilizing self-help and unilaterally changing or denying a student an educational placement during the pendency of a dispute. District may not unilaterally alter Student's last agreed upon and implemented placement during the pendency of this case. Accordingly, Student's request for stay put is granted.

ORDER

1. Student's stay put during the pendency of this matter shall be placement at a District elementary school in a general education classroom with aide support, and the services and supports as provided in his February 3, 2015 IEP.
2. All dates previously set in this consolidated matter are confirmed.

DATE: August 5, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings