

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015030562

ORDER DENYING MOTION FOR
STAY PUT

On March 11, 2015, the Office of Administrative Hearings (OAH) received a motion for “stay put” from Student. Student seeks a stay put order to allow her to continue in her “infant/toddler” classroom for the next 45 days because San Diego Unified School District does not have an available opening in a special education/general education preschool classroom, which was offered to Student and agreed to by Parent on March 10, 2015. San Diego did not file a response to the 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.)

California law provides that IEP, under Part B of the Individuals with Disabilities Education Improvement Act, means the same as an Individualized Family Service Plan (early childhood education program) under Part C of the IDEIA, when the educational program pertains to an individual with exceptional needs who is under age three. (Ed. Code §

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

56032.). However, stay put does not apply when a child transitions from a Part C early education program to a Part B special education program upon reaching the age of three. (34 C.F.R. § 300.518(c).)

DISCUSSION

Student turned three years old yesterday, and is currently eligible to receive special education services from San Diego pursuant to an IEP under Part B of the IDEIA. In support of her motion, Student indicated that Parent recently consented to her initial IEP on March 10, 2015, but that the placement called for in the IEP has not been implemented because San Diego has no opening for Student in the offered placement. Accordingly, the March 10, 2015 IEP was not implemented prior to this dispute arising, and, therefore, stay put does not attach to the placement offered in the March 10, 2015 IEP.

Because Student has turned three years of age, Student is no longer entitled to early childhood education program and/or services pursuant to her Individualized Family Service Plan. Further, stay put does not attach to Student's placement that was implemented under Part C, the infant/toddler classroom, once Student turned three years of age. Accordingly, Student's motion for stay put must be denied.

ORDER

Student's motion for stay put is denied without prejudice.

DATE: March 24, 2015

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings