BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT on behalf of STUDENT, v. DRY CREEK JOINT ELEMENTARY SCHOOL DISTRICT.	OAH CASE NO. 2009060940 ORDER DENYING MOTION FOR STAY PUT

On June 11, 2009, advocate Michael Rosenberg, on behalf of Student, filed a motion for stay put against the Dry Creek Joint Elementary School District (District). The District did not file an opposition to Student's stay put motion.

APPLICABLE LAW

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized educational 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.)

California Code of Regulations, title 5, section 3042, defines "educational placement" 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.

DISCUSSION

Student's motion for stay put requests that Student remain in his present educational placement, pursuant to the IEP in effect for the 2008-2009 school year. However, Student does not describe his last agreed-upon and implemented educational program, or provide a

copy of the IEP in effect for the 2008-2009 school year. Finally, Student does not contend that the District has stated that it will refuse to continue to implement Student's last agreed-upon and implemented educational program. Therefore, Student's motion for stay is denied.

ORDER

Student's motion for stay put is denied without prejudice. Student may re-file the motion for stay put, which must include a copy of his last agreed-upon and implemented educational program and information regarding whether District is refusing to implement that educational program.

Dated: July 23, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings