

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010010592

ORDER GRANTING MOTION FOR  
STAY PUT

On January 12, 2010, Parents, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a Request for Mediation and Due Process Hearing (Complaint) that named the Mt. Diablo Unified School District (District). The Complaint contained a request for stay put.

On January 20, 2010, counsel for the District filed with OAH a Response to Request for Due Process Hearing. The Response did not address Student's request for stay put, and the District has not otherwise responded to this request.

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 IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

DISCUSSION

In this case, Student has supported his request for stay put by attaching a copy of his December 10, 2009 IEP to the Complaint. The IEP indicates that Student's parents agreed to the December 10, 2009 IEP, with the exception of the "proposed BSP fading schedule." Thus, Student's last agreed-upon and implemented IEP is the special education program set forth in his December 10, 2009 IEP, and, in addition, the Behavior Support Plan in the IEP implemented previous to the December 2009 document.

## ORDER

1. Student's request for stay put is granted.
2. Student's stay put placement is the special education program set forth in his December 10, 2009 individualized education program, with the exception of the proposed Behavior Support Plan. Student's stay put Behavior Support Plan is the BSP in the IEP implemented previous to the December 10, 2009 IEP.

Dated: January 25, 2010

/s/

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TIMOTHY L. NEWLOVE  
Presiding Administrative Law Judge  
Office of Administrative Hearings