

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ALAMEDA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010030277

ORDER GRANTING MOTION FOR
STAY PUT

On March 2, 2010, Student filed a motion for stay put. On March 5, 2010, District filed an opposition.

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); Ed. Code, §§ 48915.5, 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 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 “specific 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.

However, if a student’s placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student’s “stay put” placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

DISCUSSION

Student’s last agreed upon IEP was executed on August 11, 2006, concurrently with a Compromise and Release Agreement. Both Student’s August 11, 2006 IEP and the August 2006 Compromise and Release Agreement provide for Student’s placement at Wings Learning Center (“Wings”), a California non-public school. On April 25, 2008, Student and District entered into subsequent Compromise and Release Agreement. The 2008 Agreement provides for Student’s continued placement at Wings, at District’s expense, through the 2008

school year. Neither the 2006 nor the 2008 Compromise and Release Agreement specifically provides that Wings shall not be considered stay-put. Neither Agreement states that Student's placement at Wings is temporary. Student's only agreed-upon placement since the August 2006 IEP has been Wings. Therefore, pursuant to the August 11, 2006 IEP, Wings is the last agreed upon placement and is Student's stay put.

ORDER

Student's motion for Stay Put is granted. Student's placement shall be at Wings, as provided for in the August 6, 2006, IEP.

Dated: March 29, 2010

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings