

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT AND LOS ANGELES
COUNTY MENTAL HEALTH.

OAH CASE NO. 2010031602

ORDER DENYING MOTION FOR
STAY PUT

On March 25, 2010, Parent, on behalf of Student, filed a Request for Due Process Hearing¹ (compliant), against the Los Angeles Unified School District (District) and Los Angeles County Mental Health (CMH).

On April 1, 2010, Student filed a motion for stay put. Neither District nor CMH filed a response to Student's motion. The Office of Administrative Hearings (OAH) found that additional information was required in order to issue a ruling on the motion. Therefore, on April 15, 2010, OAH issued an order directing parties to provide additional information regarding Student's last agreed-upon and implemented individualized educational program (IEP). CMH responded to OAH's request for additional information on April 20, 2010, and District responded on April 21, 2010. Student has not responded.

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

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

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.

DISCUSSION

Student is a 15-year-old male who has been found eligible for special education under the eligibility criteria of emotional disturbance. In early 2009, Student was placed at Devereux Residential Treatment facility² in Colorado (Devereux).³

On October 1, 2009, an annual IEP meeting was held. District and CMH decided that Student should return to California for treatment. Accordingly, Student was discharged from Devereux and returned to California on or about November 7, 2009.⁴ Since then, Student has not been enrolled in any school.

CMH argues that Parent agreed to the new placement in the IEP of October 1, 2009, and that parent did not submit any written notice of disagreement with Student’s change of placement. Student contends otherwise. In his motion for stay put, Student argues that Parent never consented to the change in placement, never signed the October 1, 2010 IEP, and that Devereux is the stay put placement for Student. Student provided an unsigned copy of the October 1, 2009 IEP, with his motion for stay put, but no other documents..

In the order for additional information, OAH ordered that the last agreed-upon and implemented IEP be provided to OAH. The District and CMH responded and provided information. In its response, CMH provided 42 pages of documentation, including the unsigned October 1, 2009 IEP, a Wrap-Around System of Care referral and consent form, and an AB 3632 Treatment Referral Form. All of the documentation was from the October 2009. The information provided by CMH did not establish the last agreed-upon and implemented placement for Student was the IEP of October 1, 2009. No other copy of an IEP signed by parent was submitted.

In District’s response to OAH’s order, District indicated that it is not opposed to Student’s motion and stated that District is presently working with CMH to re-establish

² It appears that Devereux is in Colorado according Student’s motion for stay put, rather than in Texas according to Student’s complaint.

³ According to Student’s complaint, Student was enrolled at Alhambra Unified School District (Alhambra) during the 2007-2008 school year. On June 9, 2008, Alhambra held an IEP meeting where residential placement was offered by Alhambra and agreed to by parent. In August 2008, Student relocated and moved within the boundaries of District. Pursuant to the June 9, 2008 IEP, Student was placed by CMH and District at Devereux in early 2009.

⁴ In OAH’s order of April 15, 2010, requesting additional information, Student was said to have been discharged from Devereux on October 30, 2009. This was due to error in parties’ prior filings with OAH, and Student’s correct discharge date is November 7, 2009.

Student's placement at Devereux. District stated that it would agree to an order that Student be placed in a residential placement. However, District submitted no documentation showing that Devereux is, in fact, Student's stay put placement. Student did not respond to the request for additional information.

The information provided by the parties is insufficient to establish the last agreed-upon and implemented placement for Student. A copy of the last signed and implemented IEP was not provided, OAH still does not have sufficient information from which to discern the last agreed-upon and implemented placement. Therefore, motion for stay put must be denied.

ORDER

Student's motion for stay put is denied.⁵

Dated: April 26, 2010

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

⁵ This order does not preclude parties from agreeing to place Student at Devereux pending the outcome of the due process proceedings. Student may renew his motion for stay put if a copy of the last agreed-to and implemented IEP accompanies the new motion.