

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL
DISTRICT, DRY CREEK SCHOOL
DISTRICT AND CENTER UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2010110402

ORDER DENYING MOTION FOR
STAY PUT

On November 5, 2010 Student filed a Due Process Hearing Request (complaint) and Motion for Stay Put, naming San Juan Unified School District, Dry Creek School District (DCSD) and Center Unified School District (CUSD) as the respondents.¹ On November 9, 2010, DCSD filed an Opposition to the Motion.²

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); 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.)

¹ Student’s sibling concurrently filed an identical complaint and Motion in OAH Case No. 2010110357.

² DCSD also opposed the Motion for Stay Put in OAH Case No. 2010110357, which is addressed by a separate Order in that matter.

DISCUSSION

OAH is concurrently granting CUSD's Notice of Insufficiency as to all issues in Student's complaint. Therefore Student's request for stay put is denied without prejudice until a factually sufficient complaint is filed. Stay put must be determined from the facts, and generally requires that the last agreed and implemented IEP be attached as an exhibit to the request.

ORDER

Student's request for stay put is denied without prejudice as part of the Determination of Insufficiency concurrently issued by OAH.

Dated: November 15, 2010

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings