

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

AMADOR COUNTY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011050359

ORDER DENYING MOTION FOR
STAY PUT

On May 10, 2011, Student filed a motion for stay put of his temporary home hospital program. On May 12, 2011, District filed an opposition on the ground that the temporary placement was not a current educational placement.

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.)

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.)

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.)

DISCUSSION

Here, Student's November 8, 2010 IEP placement was a special day class at Argonaut High School, and she attended that program through the beginning of the 2010-2011 school year. However, on December 7, 2010, Student suffered a broken leg requiring hospitalization. The February 9, 2011 IEP provided Student with a home hospital placement,

providing her with home instruction 5 hours per week with related services. The IEP stated that the placement was temporary and not to exceed three months.

“The policy behind [20 U.S.C.] section 1415(j) supports an interpretation of ‘current educational placement’ that excludes temporary placements...” (*Verhoeven v. Brunswick Sch. Comm., supra*, 207 F.3d at pp. 7-8.) Student’s temporary placement ended three months after February 9, 2011, and as such, is not considered to be a “current educational placement.”

ORDER

Student’s motion for stay put in a home-hospital placement is denied.

Dated: May 12, 2011

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings