

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011070704

ORDER DENYING MOTION FOR  
STAY PUT

On July 19, 2011, Student filed a Request for Due Process hearing (complaint) that contained a motion for stay put. On July 22, 2011, District filed an opposition to the motion. As discussed below, the motion is denied.

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, § 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.)

Parents who choose to enroll their child in a private school while a due process case is pending, do so at their own financial risk. If the decision finds that the district offered a free appropriate public education (FAPE), the child’s parents are not entitled to reimbursement from the school district. (*School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 373-374.)

DISCUSSION

Student’s last agreed upon and implemented IEP was dated April 17, 2009, as amended on June 10, 2009. Pursuant to these IEPs, Student attended Berkeley High School during the 2009-2010 school year.

Beginning in or around January, 2010, Student suffered depression. An IEP meeting was held on January 5, 2010 but no change in placement was offered. Student was hospitalized in or around February 2010 for a suicide attempt. District conducted a psycho-

educational assessment dated April 28, 2010. At a further IEP meeting on April 29, 2010, District offered Student a placement at a residential treatment center (RTC), and recommended a mental health assessment by the County Department of Mental Health (DMH), with services to be determined by the assessment. Parents consented, but as both parties contend, no RTC placement was ever actually implemented pursuant to that IEP.

Thereafter, on or around June 4, 2010, Parents placed Student at a residential placement entitled Boulder Creek Academy (BCA). District contends that this was a unilateral placement, and Student's allegations confirm this contention. Student's complaint states that Student's Parents placed him at BCA in the absence of an alternative option for a FAPE from District and DMH.

On September 1, 2010, and November 2, 2010, further IEPs were held, at which time District offered an RTC, with the particular placement to be determined. Parents consented to the September 1, 2010, IEP, with the following notation: "We agree to continue the process of residential placement for [Student]. We reserve the right to participate in the selection of appropriate residential placement." Parents consented to the November 2, 2010, IEP, with the following notation: "We agree with the residential placement and reserve the right to participate in any placement discussions. We prefer that [Student's] placement remain at Boulder Creek Academy for emotional considerations."

Student's motion for stay put seeks that BCA be determined as his stay put placement. However, it is clear that BCA was never offered nor implemented in any IEP. Student acknowledges that, although the April 29, 2010, and November 2, 2010, IEPs, offered an RTC, they did not specify BCA as the school of attendance. In fact, this is the gravamen of Student's complaint to be determined at due process hearing. Thus, Student's complaint alleges that District's failure to specify a particular RTC in its IEPs from and after April 29, 2010, constituted a denial of a FAPE. The complaint seeks, as a remedy, reimbursement for the past expenses of placing Student at BCA, and amendment of Student's IEP to specify

BCA as his placement. Because BCA was never offered nor implemented in any IEP, it is not Student's stay put placement. Therefore the motion is denied.

ORDER

Student's motion for stay put is denied.

Dated: July 25, 2011

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings