BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NEW HAVEN UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2011080837 ORDER DENYING MOTION FOR STAY PUT

On August 19, 2011, Student filed a due process complaint in which he included a request for stay put at The Bay School (TBS) non-public school (NPS). Student's request for stay put will be considered a motion for stay put. Student did not file a declaration authenticating facts in support of his motion. Student attached to his complaint a copy of his March 29/April 26, 2011 IEP, and a proposed June 2011 IEP, to which parents did not consent.

On August 24, 2011, District filed an opposition to Student's request for stay put on the ground that TBS NPS was not the placement in his last agreed upon and implemented IEP. Instead, District contends that Student's stay put placement is home school pursuant to the March 29/April 26, 2011 IEP. District attached several exhibits, including Student's March 29 and April 26, 2011 IEP with correspondence, which District purports to be Student's last agreed upon and implemented IEP. District's opposition was also not supported by a declaration under penalty of perjury authenticating facts or evidence in support of its 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, § 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

Student's complaint alleges that, pursuant to his 2010-11 IEP, which he did not attach as an exhibit, he attended Creative Learning Center (CLC), a NPS, for the 2010-11 school year until March 28, 2011, when CLC terminated Student's enrollment. Student's IEP team met on March 29, and April 26, 2011, at which time the IEP team agreed that Student's placement would be home school for the remainder of the school year. Parents signed their consent to the March 29/April 26, 2011 IEP as an offer of FAPE, and the IEP was implemented.

Student's IEP team met on June 14, 2011 to discuss Student's placement and services for the 2011-12 school year. Parents did not consent to District's June 14, 2011 IEP offer of FAPE, which included placement at a District school in a special day class with supports and services. They thereafter filed the due process complaint in this matter, in which placement is one of the issues.

Student now seeks stay put placement at TBS NPS. Student has not offered any evidence that TBS is contracted with District or that he ever attended TBS prior to filing his complaint. Student argues stay put at TBS is consistent with the NPS placement in his 2010-11 IEP, before Parents agreed to home school as placement. District argues that Student's stay put placement is home school, as was provided for in his March 29/April 26, 2011 IEP and actually implemented.

District's argument is persuasive. Student's proposed placement at TBS, which was unilaterally selected by Parents, was never offered by District, nor has Student established that he ever attended TBS pursuant to a signed IEP. Student's last agreed upon and implemented IEP provided that Student's placement was home school, with supports and services. The IEP team met in June 2011 to discuss placement for the 2011-12 school year. Their disagreement over District's offer of placement and services in Student's June 2011 IEP, including whether or not a NPS is an appropriate placement, is the basis for the complaint in this action. In sum, District is correct that the home school program is Student's stay put placement because it was the last agreed upon and implemented placement. Student's argument fails because the TBS placement was never implemented under an IEP. Accordingly, Student's motion must be denied.

ORDER

1. Student's motion for stay put is denied.

2. While this matter is pending, Student's stay put placement is the home school placement and services described in the March 29/April 26, 2011 IEP.

Dated: August 26, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings