

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN BRUNO PARK SCHOOL DISTRICT.

OAH CASE NO. 2011090088

ORDER GRANTING MOTION FOR
STAY PUT

On September 1, 2011, Student filed a motion for stay put. On September 1, 2011, District filed an opposition to the motion for stay put. On September 9, 2011, Student filed a reply to the opposition and on September 16, 2011, Student filed a supplement to his reply brief.

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.)

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.)

The unequivocal language of title 20 United States Code section 1415(j) guarantees that a student remains in his or her then current placement during the pendency of a dispute. (*Honig v. Doe* (1988) 484 U.S. 305, 329 [108 S.Ct. 592, 98 L.Ed.2d 686].) The purpose of stay put is to prevent school districts from unilaterally denying placement to a student while the parties are litigating the very issue of placement. (*Id.* at p. 426.)

DISCUSSION

Student contends that he is entitled to "stay put" pursuant to his February 22, 2011 IEP which provides in pertinent part that he would be placed at Portola Elementary School

(Portola). District contends that there is no room for Student at Portola, circumstances have changed and that OAH may not order District to maintain Student at Portola.

Student's placement at Portola Elementary school was made pursuant to an inter-district transfer (transfer within school district). Student was granted the transfer from his home school Belle Air elementary, a program improvement school, to Portola Elementary school on June 1, 2010 pursuant to provisions of the No Child Left Behind Act. The placement was memorialized in Student's February 22, 2011 IEP. Student attended three days of school at Portola on August 24, 2011, August 25, 2011 and August 26, 2011 before District determined that Portola was over-enrolled with children who resided within Portola's residential boundaries, refused to allow Student to continue attending class and insisted that he must enroll at Belle Air. District's board policy provides that children residing within the residential boundaries of a neighborhood school may not be displaced by students from outside of the residential boundaries. District contends that enrollment at Portola is not necessary to provide Student a FAPE, the circumstances have changed and that OAH does not have jurisdiction for force it to maintain Student at Portola.

Student's last agreed upon and implemented IEP dated February 22, 2011 provides for his placement at Portola. Therefore, Portola is Student's stay put placement. OAH has jurisdiction to determine Student's stay put placement pursuant to state and federal law. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).¹ Portola's enrollment status does not make it unavailable for placement and does not constitute the type of changed circumstances that would warrant a change to Student's stay put placement. (i.e. a school closure, the closure of a specific classroom, etc.) The school is open and the contemplated class exists. In essence, for purposes of the stay put motion, District is presumed to have offered Student placement at Portola in order to provide a FAPE. Although District now believes this was a mistake, it cannot unilaterally change the placement after Student began attending and a due process dispute arose. District must comply with the mandates of stay put.

ORDER

Student's Motion for Stay Put is granted.

Dated: September 20, 2011

/s/

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings

¹ This order addresses only Student's stay put placement during the pendency of this action and is not determinative of whether or not OAH has jurisdiction to determine the ultimate issue of whether or not District may cancel Student's transfer to Portola.