

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PAJARO VALLEY UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012010261

ORDER DENYING MOTION FOR  
TEMPORARY EMERGENCY ORDER  
OR STAY PUT

On January 11, 2012, Mother and Father (jointly Parents), on behalf of Student, filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Pajaro Valley Unified School District (District). On February 9, 2012, Student filed a motion entitled “Temporary Emergency Motion for District to Comply With Accepted Offer of Placement” (Student’s Motion). On February 14, 2012, District filed opposition to Student’s Motion.

Student’s Motion seeks an order that District implement a special education placement and related services pending the hearing on Student’s complaint, and is therefore deemed a motion for stay put. However, as Student’s Motion seeks a particular placement that was never implemented, and never offered by an individualized education program (IEP) team, Student’s motion must be 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)<sup>2</sup>; 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; *Joshua A. v. Rocklin Unified School Dist.* (9th Cir. 2009) 559 F.3d 1036, 1037.)

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

<sup>2</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

### *Student's Due Process Request*

Student's complaint alleges that he is a 9-year old boy with an eligibility of autism, and a history of allergies to milk and other substances. Student recovered from two allergic reactions at school after staff administered oral antihistamine, but Student alleges that medication might be ineffective if Student goes into life threatening respiratory arrest, and that Student is likely to develop new sensitivities over time.

Parents agreed to implementation of student's May 9, 2011, IEP (Exhibit 1) with placement and services at a District School. However, the complaint alleges that Student was denied a free appropriate public education (FAPE) when District (1) failed to offer an assessment of Student's "suspected allergy disability" at the October 19, 2011 IEP team meeting, or to offer Student placement at home with a full spectrum of services at the December 14, 2011 IEP team meeting to meet Student's unique need to avoid exposure to possible allergens at school, (2) placed Student in a special day class rather than providing Student with one-on-one instruction by a teacher in a room isolated from other students as allegedly required by the May 9, 2011 IEP, (3) restricted parents' observation of Student's program to one time per semester, and (4) failed at the IEP team meeting of October 19, 2011, to offer Student one-on-one instruction in a room isolated from other students as allegedly required by his unique needs.

### *Motion for Stay Put*

Student's Motion argues that at a meeting on November 22, 2012, between parents, the District's program director (Heather Gorman) and school nurse (Kathleen Kilpatrick), the District offered to place Student on temporary in-home instruction pursuant to Education Code section 48206.3 (Home and Hospital Instruction), and although Parents initially refused the offer, they subsequently accepted the offer in writing on December 15, 2011 (Exhibit 4), after failing to reach agreement with the IEP team at the December 14, 2011 IEP team meeting. District refused to provide Home and Hospital Instruction, and Student seeks an order that District provide him with a temporary in-home placement, with either (i) all services provided for in the May 9, 2011 IEP, or (ii) one hour of instruction per day.

Student's Motion is evasive on the circumstances surrounding the November 22, 2011 meeting, and the declaration of Mother in support of Student's Motion provides no factual information beyond a reference to a "meeting." The document created at the meeting (Exhibit 3) is handwritten onto a District form entitled "Summary of Informal Conference or Meeting" (Summary) and lacks any indication that it was documenting an IEP team meeting, or that there was an IEP team in attendance. Mother admits that Student was not provided with Home and Hospital Instruction, and that Student is at home because she has "not returned [Student] to school."

District opposes Student's Motion, characterizing it as a stay put motion seeking a placement never offered or agreed upon by the parties. District's declaration by Ms.

Gorman details an “informal meeting” to elicit information from Parents regarding Student’s health care plan and to explain Home and Hospital Instruction to Parents. Although the words “Parents do not want the districts [*sic*] offer of home and hospital for [Student]” are written on the Summary, the other contents of the Summary, and Ms. Gorman’s statements that the meeting was not an IEP meeting and that neither she nor Ms. Kilpatrick made an offer of Home and Hospital Instruction, establish that the Summary is not a written IEP team recommendation for Home and Hospital Instruction.<sup>3</sup>

Pending a fair hearing on his complaint, Student is entitled to the placement called for in the last IEP implemented prior to the dispute arising. (See *Thomas v. Cincinnati Bd. of Educ.*, *supra*, 918 F.2d at p. 625.) Student’s Motion seeks an order treating the Summary as an amendment to the May 9, 2011 IEP, requiring a change to in-home placement with provision of a full spectrum of services, or as a stand-alone IEP, requiring an in-home placement with statutorily mandated instruction of one hour per day. (See Ed. Code, § 48206.3, subd. (c)(1).) However, the Summary is neither an IEP, nor an amendment of the May 9, 2011 IEP, and even if it were, it was not implemented prior to the filing of Student’s complaint and cannot be the basis of a stay put order. Therefore, Student is not entitled to a stay put order for in-home Home and Hospital Instruction, with either related services from the May 9, 2011 IEP or one hour per day of instruction.

The purpose of a stay put order is to maintain the status quo pending a due process hearing. Student cites no authority for the Office of Administrative Hearings to order implementation of an educational program pending due process that has not been agreed upon and implemented by the parties prior to the filing of the complaint.

#### ORDER

The motion for stay put, or for a temporary emergency order that District implement in-home placement and services, is denied.

Dated: February 17, 2012

/s/  
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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>3</sup> This finding is limited to the evidence offered, and is not intended to be binding upon the administrative law judge at the hearing on Student’s complaint upon presentation of further evidence.