

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SHANDON JOINT UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012020281

ORDER GRANTING MOTION FOR
STAY PUT; ORDER DENYING
MOTION TO DISMISS

On February 9, 2012, Student filed a motion for stay put against Shandon Joint Unified School District (District) with the Office of Administrative Hearings (OAH). Student asserted that the District was not implementing his last agreed upon and implemented educational program. On February 15, 2012, the District filed an opposition to the motion and also a motion to dismiss, asserting that Student no longer resided within the District's boundaries. On February 16, 2012, Student filed a reply to the opposition to the motion for stay put and an opposition to the motion to dismiss, which contended that Student still resides within the District. On February 17, 2012, OAH issued an order requesting additional information from Parent before a ruling may be made on the pleadings. On February 21, 2012, Student submitted a declaration and attached documents from Parent.

APPLICABLE LAW

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the Individuals with Disabilities Education Act or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

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)¹; 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

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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.)

DISCUSSION

Stay Put

Student’s motion for stay put requests that the District continue fund his placement at the Beacon Day School, a non-public school (Beacon). The parties’ dispute centers on whether Parent’s residency is still within the District or in Orange County. Parent contends that she just resides in Orange County while Student attends Beacon, while the District contends that Parent and Student now permanently reside in Orange County.

In this matter, the parties do not dispute that Student’s last agreed upon and implemented education program with the District is the May 25, 2011 IEP, which placed Student at Beacon, which is over 200 miles from the District. Student has attended Beacon since June 2009. On February 13, 2012, the District informed Parent that as of February 16, 2012, the District would cease funding Student’s placement at Beacon because the District’s investigation determined that Student no longer resided within the District. The District contends that OAH does not have jurisdiction over the issue of residency because the issue for residency is for the District’s Board to determine through a separate hearing process.

The District is incorrect as OAH does have the authority in special education proceedings to determine a student’s residency in regards to a school district’s continuing obligation to provide a student with special education services. (*Student v. San Jose Unified School District* (2010) Cal.Ofc.Admin.Hrngs. Case No. 2010050065.) The District’s position that Student no longer resides in the District is premature without OAH first conducting a hearing as Parent’s February 21, 2012 declaration establishes a triable issue for hearing as to residency. The principle of stay put exists to prevent a school district from utilizing self-help and unilaterally changing or denying a student an educational placement during the pendency of a dispute. The District may not unilaterally alter Student’s last agreed upon and implemented placement during the hearing process. Accordingly, Student’s request for stay put is granted.

Motion to Dismiss

As noted earlier, the District contended that OAH does not have jurisdiction to hear this matter because Student’s remedy as to residency rests with a hearing process through the District, and on appeal to the county office of education. However, OAH does have the

authority to determine residency for students receiving special education services. (*Student v. Fairfield Suisun Unified School District, Live Oak School District, and Cypress Charter School* (2011) Cal.Ofc.Admin.Hrngs. Case No. 2010120551.) As Parent's declaration creates a triable issue for hearing and OAH has jurisdiction to determine residency in special education due process hearings, the District's motion to dismiss is denied.

ORDER

1. Student's motion for stay put is granted.
2. District's motion to dismiss is denied.

Dated: February 23, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings