

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012060261

ORDER DENYING MOTION FOR
STAY PUT WITHOUT PREJUDICE

PROCEDURAL BACKGROUND

Student, through her parent, filed a request for due process (complaint) on June 5, 2012, with the Office of Administrative Hearings (OAH) naming the Los Angeles Unified School District (District). In her complaint, Student contends that the District denied her a free appropriate public education, in pertinent part, by offering her an inappropriate placement and inadequate related services in an individualized education program (IEP) dated February 29, 2012. Student contends that the District's offer of placement at its McBride Special Education Center (McBride) instead of continued placement at Webster Middle School (Webster) was inappropriate and not the least restrictive environment for Student. As part of her complaint, Student included a motion for stay put. Student attached an unsigned copy of her most recent IEP, dated February 29, 2012. This is the IEP with which Student's complaint takes issue. Student did not attach a copy of her last agreed upon IEP. Student's complaint references an IEP dated November 16, 2011, but Student did not attach that IEP to her motion. The District did not file a response to Student's motion.

On June 11, 2012, OAH denied Student's motion for stay put without prejudice because Student failed to provide any evidentiary support for what constitutes her stay put placement and services. In its Order, OAH stated:

Accordingly, Student's request for stay put is denied without prejudice to her filing a new motion for stay put. If she does so, she must attach a complete copy of the last signed IEP and if necessary, provide a declaration under penalty of perjury that helps establish what her current placement and services are.

Student filed a second motion for stay put on June 20, 2012. Student did not attach a copy of her November 16, 2012 IEP. Rather, as explained below, she attached an altered copy of her February 29, 2012 IEP. The District has not responded to Student's second motion.

For the following reasons, Student's second motion for stay put is denied as she has failed to follow the directives of the OAH Order dated June 11, 2012, and still has not provided concrete evidence of what her stay put placement and services are.

APPLICABLE LAW

In its Order of June 11, 2012, denying Student's first motion for stay put, OAH stated the pertinent law concerning stay put for students in due process proceedings. To reiterate, 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 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

The copy of Student's February 29, 2012 IEP that was submitted as an attachment to her complaint was not executed. Section Q of the IEP is entitled "Parent Participation and Consent." Approximately a third of the page down is a section entitled "Consent/No Consent/Request for Due Process Alternative." The copy of this page submitted with Student's complaint is blank. No boxes are checked off on the page, there is no signature by Student or her parent, and there are no comments.

In her renewed motion for stay put, Student attached another copy of the February 29, 2012 IEP. Student also provided a declaration by her mother. However, although directed to do so in the OAH order dated June 11, Student failed to attach a copy of her November 16, 2011 IEP.

There is a significant difference between the copy of the February 29, 2012 IEP attached to Student's complaint and the copy attached to her renewed motion. The exhibit attached to the renewed motion also includes the page entitled "Parent Participation and Consent." However, in the second version of this IEP, this consent page has been altered. Student's mother has now checked off four of the boxes in the section entitled "Consent/No Consent/Request for Due Process Alternative." She has checked the box which states "Parent. . . . disagrees with the following," the box which states "Instructional Setting," the

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

box which states “Services,” and the box which states “Parent. . . consents to the following elements of the IEP being implemented, pending conclusion of Informal Dispute Resolution, State Mediation Only or Formal Due Process Proceedings.” However, Mother has not written in any portions of the IEP to which she is consenting in the space following this checked box.

Next to the box entitled “Instructional Setting,” there is an area entitled “Specify.” Mother has written in block letters “See attached hearing request dated 6/4/2012 + Declaration of Michelle Stein 6/12/(illegible). Next to the box entitled “Services,” there is another area entitled “Specify.” Here, mother has written “See attached hearing request dated 6/4/12 + Declaration of Michelle Stein dated 6/12/13 (sic).” Mother signed this page on June 12, 2012.

It is abundantly clear that Mother checked the boxes, hand-wrote the references, and signed this page after she filed the complaint on June 4, 2012, and in response to the OAH order denying Student’s motion for stay put. There is no clarification on this page as to which parts of February 29, 2012 IEP Mother is consenting. What Mother *has* indicated is that she disagrees with the instructional setting and services offered in the IEP.

Mother’s declaration does not assist in clarifying to which portions of the February 29, 2012 IEP she has agreed, or, more significant in the context of Student’s renewed motion for stay put, what placement and services constitutes stay put for her. In her declaration, Mother states that she signed the IEP on June 12, 2012. She states that this IEP offered Student placement at the McBride Special Education Center for the extended school year and the “regular session.” Mother then reiterates the services offered by the District in this IEP. In paragraph 12 of her declaration, Mother states that she objected to the offered instructional setting at McBride and the offered services, which she states was the subject of the instant request for due process.

Mother than states that “as evident in the signed 2/29/12 IEP, and asserted above, the placement and services for the purposes of a stay-put order are identified in paragraphs 5, 8, 9, 10 and 11 above.” Mother concludes her declaration by stating that she is requesting OAH to issue a stay put order, retaining Student at Webster Middle School, including for the extended school year, and for the services offered in the February 29, 2012 IEP.

Student has failed to clarify what her stay put placement is. Her renewed motion, with its altered IEP exhibit and Mother’s declaration, has only served to confuse the issues.

As stated above, a student’s stay put placement and services are those which are contained in the student’s last agreed-to IEP that was implemented *prior to the filing of a due process complaint*. Assuming that Mother agreed to some or all of the provisions of the February 29, 2012 IEP, her agreement occurred *after* Student filed her complaint. Therefore, this IEP was not agreed to and implemented prior to the filing of the instant complaint. Its provisions cannot be Student’s stay put.

Moreover, the facts here are made more confusing by the altered IEP document and by Mother's declaration. In the altered IEP, Mother specifically disagrees with the placement and services offered. She does not indicate exactly to which provisions she is consenting. Her declaration lays out the IEP offer, but then goes on to state that she objected to the placement and the services. Mother then contradictorily states that although she has objected to the placement and services offered in the IEP, those same services to which she has objected somehow constitute Student's stay put.

Student did not attach her November 16, 2011 IEP as specifically directed by OAH. She has provided an IEP executed after the filing of her complaint that cannot serve as the basis of her stay put. Student has then confused the issues by offering evidence that her Mother has failed to consent to her February 29, 2012 IEP, but still wants the provisions of that IEP to serve as her stay put. At this point, there is no certainty whatsoever as to what constitutes Student's stay put.

Student's renewed motion for stay put is therefore denied. Student may re-file her motion. However, she must provide the IEP which was in effect and had been implemented *prior to the time she filed her complaint* on June 5, 2012.²

IT IS SO ORDERED.

Dated: June 29, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

² Certainly, Mother may consent to some or all of Student's February 29, 2012 IEP, which the District should then implement. However, as stated above, an IEP implemented subsequent to the filing of a due process complaint is not a student's stay put as of the time the complaint was filed. Additionally, Mother must clarify exactly to which portions of the IEP she is consenting. It is entirely unclear from the IEP and Mother's declaration what her intentions are.