

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL  
DISTRICT, PASADENA UNIFIED  
SCHOOL DISTRICT, AND LOS  
ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012060940

ORDER DENYING MOTION FOR  
STAY PUT

On June 22, 2012, Student filed a request for a due process hearing (complaint). Pasadena Unified School District (PUSD), Long Beach Unified School District (LBUSD), and Los Angeles Unified School District (LAUSD) were named as Respondents.

On June 25, 2012, Student filed a Motion for Stay Put. The motion seeks an order for Student's placement at a non-public school (NPS) by PUSD as the last agreed upon placement. On June 29, 2012, PUSD filed a Response to Petitioner's Due Process Complaint. No opposition to Student's Motion for Stay Put has been filed.

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.) An IEP that has not been implemented is not a "placement" for the purposes of stay put. (*Id.*) Stay put refers to the operative placement under which the child is actually receiving instruction at the time the dispute arises. (*Id.* at p. 626.)

## DISCUSSION

Student is 11 years old and resides in a licensed care institution (LCI) within PUSD. He is eligible for special education services under the criteria for emotional disturbance (ED). Student has been diagnosed with Attention Deficit Hyperactive Disorder (ADHD), Bipolar Disorder, Mood Disorder, and Post-Traumatic Stress Disorder (PTSD).

Student attended LAUSD for Kindergarten, then attended other districts and returned to LAUSD during his 3rd grade year. Student was assessed by LAUSD in 2011. The assessments were completed by the fall of 2011.

By November 2011, before an IEP meeting was convened by LAUSD, Student changed districts and was then within the boundaries of LBUSD. LBUSD generated an assessment plan on January 18, 2012. An initial IEP was convened on March 26, 2012, while Student was attending 5th grade at Dooley Elementary School within LBUSD. LBUSD offered Student placement in an NPS, including extended school year (ESY), and services including counseling and speech and language therapy (LAS). The IEP was signed but Student was transferred by the Department of Children and Family Services to a new group home before the IEP could be implemented.

In April 2012, Student was placed in his current LCI within the boundaries of PUSD. Student attended a special day class at Don Benito Fundamental School, a public school, with no counseling and no LAS services. PUSD convened an IEP meeting on June 8, 2012. This IEP was not signed. According to Student's motion, Student has recently graduated from Don Benito Fundamental School.

Student contends he is entitled to ESY at an NPS because the last agreed upon IEP was the March 2012 IEP from LBUSD. Student further requests an order that Student's stay put placement is an NPS during the pendency of this action. Student fails to submit the March 2012 IEP or any evidence supporting the facts set forth in Student's Motion. However, regardless of the failure of Student's attorney to submit proper support for the motion, the motion is considered on the merits because the facts set forth in the motion, as a matter of law, would not entitle Student to the stay put requested. For the reasons set forth below, Student's motion is denied.

Student argues he should not be prejudiced because the March 2012 IEP from LBUSD was not implemented. Student relies upon *Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115. This reliance is misplaced. *Vashon Island* affirms the general rule that a district has an obligation to provide the placement described in the most recently implemented IEP. (*Id.* at pp. 1133-34.) *Vashon Island* does not stand for the proposition that stay put requires a new school district that is already implementing educational services to provide a placement offered by a prior school district that had never even been implemented.

In this case, it appears Student attended public school in several districts and that no assessments were completed before fall of 2011. Student was not found eligible for special education services, and no IEP meeting was held, until March 26, 2012. However, at no time was this IEP ever actually implemented. At the time this dispute arose, Student had been receiving instruction in a special day class in a public school and had progressed to the next grade level. Thus, the NPS placement agreed to in March 2012 but not implemented is not a placement for the purposes of stay put. Instead, the educational program that was being implemented by PUSD is Student's stay put placement under these facts.

#### ORDER

Student's motion for stay put placement in an NPS during the pendency of this hearing is denied.

Dated: July 09, 2012

/s/

---

MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings