

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. 2012070728

ORDER GRANTING STUDENT'S
MOTION FOR STAY PUT

Student filed a request for due process hearing with the Office of Administrative Hearings (OAH) on July 23, 2012, naming the Los Angeles Unified School District (District). On July 24, 2012, Student filed a motion for stay put. The District has not filed an opposition to Student's motion or otherwise replied to it.

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)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.)

STUDENT'S CONTENTIONS

In his motion for stay put Student states that his last agreed upon and implemented individualized education program (IEP) is dated January 18, 2011. Student attached a copy of the IEP to his motion. Student states that this IEP placed him at the Lowman Special

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

Education Center, a specialized school run by the District exclusively for pupils with special needs. Student states that his IEP also provided him with assistive technology support and language and speech services as well as transportation from his home to Lowman. Lowman is not Student's school of residence as it is not a comprehensive elementary school campus.

Student states that his family moved before the end of the 2011-2012 school year to a residence approximately 4.6 miles from Lowman. Student's previous residence had been approximately one mile from Lowman. Student states that his parents informed the District of the move but that no one at the District mentioned that there would be any problems with his continued attendance at Lowman. Student further states that his school bus driver informed Student's mother that there would be no difficulties continuing to pick up Student and take him to Lowman because there were other pupils in the same area also being transported by the same bus to Lowman. The District school bus picked Student up at his new residence once he moved there and continued transporting him to Lowman for the remainder of the 2011-2012 school year.

Student states that he is eligible for extended school year (ESY) placement. However, the school bus failed to pick him up for the first day of ESY. Mother went to Lowman the following week and spoke with the ESY Principal there. The Principal informed Mother that Student had been removed from Lowman and placed at the Lull Special Education Center. The Principal informed Mother that Student could continue at Lowman for the summer but that no transportation would be provided. However, Student would be fully removed from Lowman for the 2012-2013 school year. Student points to the fact that his new home is equidistance from Lull and Lowman. Student provided the declaration of his Mother in support of these contentions as well as computer printouts showing the distance to the two schools from his residence.

In a letter to Student's advocate, which Student attaches to his motion for stay put, the District states that the change in placement from Lowman to Lull was due to Student's change in residence and was therefore not a change in placement.

Student contends that Lowman is his current educational placement, and that it must remain his stay put placement while his due process complaint is litigated, or unless the parties agree otherwise. Student cites to various OAH and court decisions that found that a specific non-public school or non-public agency was the respective student's stay put placement, even if the school district in question was no longer contracting with district, or, in another matter, even where the non-public school had moved to a different location. Student contends that the District's proposed change from Lowman to Lull will result in a change not only in the location of Student's educational program, but also a change in fellow students, teachers, other staff, and facilities.

It is unclear from Student's moving papers if the educational program at Lull mirrors or even significantly replicates the program at Lowman. It is, however, Student's contention that the change is significant. He points to the fact that his IEP specifically placed him at Lowman, and analogies the placement there to placement at a non-public school.

The District has not responded to Student's motion and therefore has failed to shed light on the reasons for the abrupt change from Lowman to Lull, without advance notice to Student. The District has also failed to clarify whether the placement at Lull is equivalent to placement at Lowman. The purpose of a stay put motion to maintain a student's placement while the issue of placement is disputed in a due process proceeding. Student has provided ample evidence that his IEP placed him at Lowman, not at his school of residence, and that he was initially transported there by the District from both his prior and his present residences. The District has not provided any evidence to counter Student's contention that Lowman is his stay put placement.

ORDER

Student's motion for stay put is therefore granted. The Los Angeles Unified School District shall continue providing Student with placement at Lowman, with attendant transportation, until this matter is fully litigated or until the parties mutually agree to a different placement.

Dated: July 31, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings