

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012080271

ORDER COMPELLING PARTIES TO
SUBMIT SUPPLEMENTAL BRIEFS
AND EVIDENCE IN SUPPORT OF
STAY PUT REQUEST

On September 21, 2012, Student's father filed a request for due process hearing and mediation, which included a request for stay put. The stay put request was not supported by any evidence, such as a copy of Student's last agreed upon individualized education program (IEP). On October 1, 2012, District filed an opposition, supported by a declaration under penalty of perjury from its attorney. District argued that 1) District did not disagree that it was obligated to implement Student's last agreed upon individualized education program (IEP) and that it was implementing the IEP it understood to be Student's last agreed upon IEP, and 2) Student's request did not identify which IEP was applicable to his right to stay put such that an order from the Office of Administrative Hearings would be appropriate.

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.)

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

DISCUSSION AND ORDER

Student's request for a stay put order is not supported by any evidence that would establish what his stay put should be, and the factual allegations in his complaint are not instructive on the issue. He has failed to offer a copy of what he contends is the last agreed upon and implemented IEP upon which stay put would be based, or any declaration under penalty of perjury that establishes the date of his last agreed upon IEP, and what placement and related services, if any, were agreed to in that IEP.

On the other hand, while District acknowledges its obligation to implement the last agreed upon IEP, the only evidence District offered in support of its request to deny Student's request is a declaration by its attorney. That declaration only establishes that the District's attorney has personal knowledge that Student is currently enrolled in the Lincoln Unified School District. District offers no evidence as to what the date of that IEP is, what placement and services are called for, or anything else that would establish that it is, in fact, implementing the IEP, such that Student's request is moot. The fact that District does not deny its obligation to implement the last agreed upon IEP is not sufficient to deny Student's request, given District's failure to identify the terms of the stay put, as it understands them, and state in a sworn declaration that it is implementing those terms.

Because neither party has offered evidence as to what Student's stay put should be, OAH cannot rule on the request for stay put without further evidence. Both parties are ordered to submit a declaration under penalty of perjury, along with a copy of what they each contend is Student's last agreed upon and implemented IEP, and any other evidence they contend supports a stay put order or a denial of Student's request for stay put.

If Student continues to seek an order granting stay put, then Student shall file a supplemental brief supporting his request, accompanied by a copy of the last agreed upon IEP, not later than October 9, 2012. If Student does not file a supplemental motion by October 9, 2012, Student will be considered to have abandoned the stay put motion, and OAH will take no further action on it. If Student files a supplemental brief, District shall file a supplemental brief accompanied by evidence of what it contends is Student's stay put by no later than October 16, 2012.

IT IS SO ORDERED.

Dated: October 2, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings