

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2012080913

ORDER GRANTING MOTION FOR
STAY PUT

On August 28, 2012, the San Mateo-Foster City School District (District) filed a due process hearing request before the Office of Administrative Hearings (OAH) seeking a ruling as to whether the District's proposed special education placement offered a free appropriate public education (FAPE) to Student. On August 30, 2012, Student's parents on behalf of Student filed a motion for stay put, seeking to keep Student in his last agreed-upon individualized education program (IEP) placement while the due process case is pending.¹ On August 30, 2012, District filed an opposition to the motion.

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 IEP which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

DISCUSSION

In its opposition, the District states that it will return Student to his last agreed-upon and implemented IEP placement if Student's parents file a due process hearing request. The District argues that, in order for stay put to apply, there must be a pending due process proceeding.

¹ The copy of the motion filed by Student's parents with OAH appeared to be missing one or more pages, but provided sufficient information to support the motion when read in conjunction with the District's opposition papers.

The District's position is somewhat confusing, because there is a pending due process proceeding in this matter – the case filed by the District. The District cites to no legal authority stating that only a parent-filed due process case warrants stay put. Absent such authority, the stay put provisions in state and federal law provide that *any* due process proceeding is sufficient to give rise to stay put. The motion of Student's parents for stay put is properly granted at this time.

ORDER

The request made by Student's parents for stay put is hereby granted. The District shall immediately return Student to the last agreed-upon and implemented IEP placement pending the hearing in the District's due process case.

Dated: August 31, 2012

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings