

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HAYWARD UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012090581

ORDER DENYING MOTION FOR
STAY PUT; ORDER DENYING
REQUEST TO RESET PROCEDURAL
TIMELINES

On October 29, 2012, Student filed a motion for stay put with the Office of Administrative Hearings (OAH) against the Hayward Unified School District (District). Student contends that his February 21, 2012 individualized education program (IEP) is his last agreed-upon and implemented educational program and that the District should permit him to attend Stonebrae Elementary School (Stonebrae). Student also asks that OAH reset the hearing timelines because the parties have not participated in a resolution session. On October 30, 2012, the District filed an opposition to Student's motion for stay put because Student no longer resides within the District. The District does not oppose Student's request to reset the procedural timelines so the parties may participate in a resolution session.

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 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.

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the Individuals with Disabilities Education Act (IDEA) or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

California Education Code section 56325, subdivision (a)(2) states:

In the case of an individual with exceptional needs who has an individualized education program and transfers into a district from a district operating programs under the same special education local plan area of the district in which he or she was last enrolled in a special education program within the same academic year, the new district shall continue, without delay, to provide services comparable to those described in the existing approved individualized education program, unless the parent and the local educational agency agree to develop, adopt, and implement a new individualized education program that is consistent with federal and state law.

A local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the IEP team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. §300.510(b)(4).)

DISCUSSION

Stay Put

The parties do not dispute that his last agreed-upon and implemented educational program is his February 21, 2012 IEP, which placed him at Stonebrae. However, Student moved out of the District during the summer 2012, and now resides within the boundaries of the San Lorenzo Unified School District (San Lorenzo). Student requests that he continue to attend Stonebrae because both the District and San Lorenzo belong to the same Special Education Local Plan Area (SELPA). However, the fact that the District and San Lorenzo belong to the same SELPA does not require Student continue to attend Stonebrae. Instead, the requirement is for San Lorenzo to provide comparable services, as soon as possible, as set forth in the February 21, 2012 IEP, and not placement back at Stonebrae. Accordingly, Student's stay put placement is not Stonebrae.

Resolution Session

Student requests that OAH order the District to convene a resolution session. The IDEA and Education Code section 56501.5 create the obligation of a LEA to convene a resolution session within 15 days of its receipt of the complaint. However, neither the IDEA nor California law grant an administrative law judge the authority to order a LEA to convene a resolution meeting if the LEA failed to do so. Pursuant to Education Code section 56501.5, subdivision (e)(2), a student's remedy for a LEA's failure to hold a timely resolution session is to request that OAH immediately begin the 45-day hearing timeline. Accordingly, Student's request that OAH order the District to convene a resolution session is denied.²

ORDER

1. Student's motion for stay put is denied.
2. Student's motion to reset the procedural timelines is denied.³

Dated: October 31, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

² Nothing in this Order prevents the District's from filing a motion that seeks to dismiss Student's complaint due to Parent's refusal to attend a resolution session that the District sought to schedule.

³ Nothing in the Order prevents the parties from making a continuance request to continue the initially set due process hearing date.