

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

UPLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013080888

ORDER GRANTING MOTION FOR
STAY PUT

On August 26, 2013, Student filed a motion for stay put. District did not oppose the motion. For the reasons discussed below, the stay put motion is granted.

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.)

DISCUSSION

On August 26, 2013, Student through her parent (Parent) filed a Due Process Hearing Request (complaint)² against Upland Unified School District (District) and Central School District (CSD).³

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

² A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

Student's complaint alleges that Student is 11-years old, in the fifth grade, and qualifies for special education under the eligibility category of autistic-like behaviors. Student alleges Student's school of residence is Magnolia Elementary School (Magnolia Elementary) which is located in the District. Student also alleges that she has been attending Central Elementary School (Central Elementary), which is located in CSD, since kindergarten. The Student's complaint further alleges that at the May 14, 2013 IEP, the IEP team made an offer for Free and Appropriate Public Education (FAPE) which included changing Student's placement for the 2013-2014 school year from a special day class (SDC) at Central Elementary, where Student is mainstreamed each day in two 45-minute science and reading classes, to a moderate to severe SDC with a modified curriculum at Magnolia Elementary where there are no mainstreaming opportunities. Student alleges Parent objected to this change in placement, but that the IEP team withdrew Student from Central Elementary and enrolled her in Magnolia Elementary for the 2013-2014 school year. Student's complaint seeks an order adjudicating the SDC at Central Elementary as the least restrictive environment (LRE). Based on alleged deficiencies in the IEP and the District's assessments, Student also seeks an order for independent educational evaluations paid for by the District (IEE's), including a psychoeducational assessment and a functional behavioral analysis (FBA) assessment.

Student's stay-put motion seeks Student's re-enrollment in Central Elementary with "45 minutes of daily mainstreaming in Science and 45 minutes in Reading."

Student submitted part of the May 14, 2013 IEP in support of her stay put motion. Only three pages of the 19-page IEP were attached, including the page with the offer of FAPE and the signature page. The May 14, 2013 IEP states that Student "will transition to the district moderate/severe program for the 2013-2014 school year." By her signature, the Parent consented to the IEP except for placement.

Student submitted the May 18, 2012 IEP in support of her stay-put of Student's last agreed upon placement at Central Elementary. The May 18, 2012 IEP at page 1 states that the Student's school of attendance is Central Elementary and that the FAPE offered is at "San Bernardino County Superintendent of Schools Mild/Moderate program servicing students with autism currently located at Central Elementary." The May 18, 2013 IEP establishes the Student's stay put for purposes of the location of the placement as Central Elementary.

Student failed to establish that the mainstreaming component of her placement at Central Elementary is inclusive of "45 minutes daily mainstreaming in Science and 45

³ On August 27, 2013, Student filed a "First Amended Complaint" (first amended complaint) and on September 4, 2013 Student filed a document entitled "Due Process Complaint." The first amended complaint and complaint filed on September 4, 2013 omit Central School District as a respondent.

minutes in Reading.” The May 18, 2012 IEP, at pages 3 and 6, states that Student mainstreams with a regular education science class for 30 minutes three days a week and with a regular education reading class for 30 minutes daily. The IEP also states that Student is mainstreamed in physical education (PE) 30 minutes, three times a week. Student failed to proffer any evidence that the last agreed upon IEP provided regular education mainstreaming opportunities for 45 minutes daily in any subject.

For these reasons, Student’s stay put for the regular 2013-2014 school year is the May 14, 2013 IEP offer, other than placement, which shall be as set forth in the May 18, 2012 IEP, inclusive of placement in the mild/moderate program at Central Elementary, and regular education mainstreaming in science, reading, and physical education.

IT IS SO ORDERED.

Dated: September 20, 2013

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings