

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL
DISTRICT.

OAH Case No.. 2014071200

ORDER DENYING MOTION FOR
STAY PUT

On July 25, 2014, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings a Request for Due Process Hearing and a motion for stay put. On July 30, 2014, Berkeley Unified School District filed a statement of non-opposition to the motion and agreed to continue Student's placement at Phillips Academy.

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 is entitled to remain in his last agreed upon and implemented placement while a dispute is pending and an order for stay put is generally not required unless a dispute over placement exists. Here, Student has not alleged whether a dispute exists as to Student's placement and services while the case is pending. Berkeley has agreed in its non-opposition to continue Student's educational placement at Phillips Academy, which is Student's current placement required by the May 28, 2013 IEP, which is the last agreed upon and implemented

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

IEP. If there is a dispute that exists as to that placement, Student may file a request for stay put with more specificity as to the nature of the dispute and the terms of stay put. The motion for stay put is DENIED.

DATE: July 31, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings