

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SWEETWATER UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2015110791

ORDER DENYING MOTION FOR
STAY PUT

On November 17, 2015, Student filed a motion for stay put. On November 20, 2015, District filed an opposition disputing the legal basis on which Student requested stay put and Student's entitlement to stay put, but also agreeing to Student remaining in the independent study educational program Student's motion requested.

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

DISCUSSION

District opposes the motion for stay put on the basis that as a Student who had not yet been found eligible for special education and related services, there was no "current educational placement" pursuant to an IEP implemented prior to the dispute arising; however, District in effect does not oppose Student's motion for stay put in that District does not object to Student continuing in the Alternative Education – Independent Studies program and indicates that "to the extent this is the program [in which] [Student] is requesting to be maintained, there is no dispute."

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

Although District has not pledged by sworn declaration to continue providing services to Student through the Alternative Education – Independent Studies program, District’s filing indicates there is no dispute over what program of instruction Student will participate in during the pendency of this case. An order for stay put is generally not required unless a dispute over placement exists. Accordingly, Student’s motion for stay put is denied. Should circumstances change, Student is not precluded from submitting a new motion for stay put supported by authenticated documents and declarations under penalty of perjury.

IT IS SO ORDERED.

DATE: November 30, 2015

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings