

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT.

OAH Case No. 2015111033

ORDER DENYING STUDENT'S
MOTION FOR STAY PUT

On November 24 2015, Student filed a motion for stay put, supported by a declaration under penalty of perjury from Student's father. On December 1, 2015, Etiwanda School District filed an opposition.

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 (*Thomas*).)

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, subd. (a).)

DISCUSSION

Student's motion asserts that Student has recently attended a special day class at District pursuant to his October 8, 2015 IEP; that Father recently revoked consent to that placement; and that District has not removed Student from the classroom. Student's due process hearing request seeks an order finding that Father's partial revocation of consent to placement, only, mandates District to change his placement to a general education setting.

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

In this motion, Student seeks an order that District remove Student from the special day classroom as stay put, relying on the revocation of consent to placement. Student did not submit a copy of the last implemented and agreed upon IEP identifying the placement Student contends is stay put in consideration of Father's revocation of consent to a special day class. District's opposition asserts that the last agreed upon and implemented placement for stay put purposes is the special day class called for in the October 8, 2015 IEP, but District also did not provide a copy of that IEP.

The parties offer arguments on the issue of appropriate placement based upon revocation of consent, a central issue raised in Student's complaint. Those arguments are not relevant to this motion.

Nevertheless, because the parties agree that the October 8, 2015 IEP was Student's last agreed upon and implemented IEP at the time the dispute arose, the placement and services in the October 8, 2015 IEP are his stay put placement pending completion of this due process proceeding.

Student motion for stay put is denied.

IT IS SO ORDERED.

DATE: December 3, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings