

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OCEANSIDE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015111073

ORDER DENYING MOTION FOR
STAY PUT

On November 30, 2015, Student filed a motion for stay put, supported by a declaration under penalty of perjury from Parent. On December 3, District filed an opposition. The Office of Administrative Hearings denied the motion without prejudice on December 8, 2015. On December 9, 2015, Student filed an Amended Motion for Stay Put. District filed an opposition to the amended motion on December 14, 2015. For the reasons discussed below, the motion is denied.

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.)

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 amended motion for stay put seeks an order compelling District to provide transportation to a private after-school “Together We Grow” day care program located

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

outside of District boundaries so Parents can continue to work. The amended motion differs from the original motion by including Student's October 2014 individualized education program and correspondence from August and September 2015. Although District argues that Student's amended motion is effectively a motion for reconsideration of the December 8, 2015 order, this Order considers the motion as a new motion, consistent with the directives given to Student in the previous order.

Together We Grow was located within District boundaries until summer of 2015, when it moved outside of District's boundaries to Vista. As a courtesy to Parents, during the 2014-2015 school year District provided after-school transportation to Together We Grow. Student argues that District must continue to provide transportation to Together We Grow, regardless of its location, as Student's stay put.

The amended motion includes a copy of Student's October 2014 IEP, an August 2015 amendment to the October 2014 IEP, and correspondence from August and September 2015. The parties agree that the October 2014 IEP is the last agreed upon and implemented IEP. The October 2014 IEP provides for transportation by checking a box "yes." The IEP does not specify the nature of the transportation such as home to school, curb to curb, or to or from a specific location. Nothing in the IEP refers to transportation to an after-school day care program as part of Student's agreed upon and implemented educational program. On the contrary, the 2015 amendment notes a dispute between Parent and District over after-school transportation to Together We Grow or any after-school program outside of District's boundaries for the 2015-2016 school year, which is the basis for Student's due process complaint.

Stay put is based upon Student's last agreed upon and implemented IEP. The fact that District provided transportation to Together We Grow while it was located within District as a courtesy to Parents does not, by itself, create an obligation to continue providing that service as stay put, particularly now that the program is located outside of District boundaries. Nothing in the evidence Student has offered establishes that the IEP team ever amended the October 2014 IEP to provide for transportation to a private after-school program. Student has not established a legal basis for stay put as to after-school transportation to a private day care program and his motion is therefore denied.

IT IS SO ORDERED.

DATE: December 16, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings