

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ACTON-AGUA DULCE UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2015120613

ORDER DENYING MOTION FOR
STAY PUT

On December 30, 2015, Student filed a motion for stay put. No opposition has been filed.

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); 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

Student’s complaint alleges that he was eligible for special education and placed in pre-kindergarten classes with speech service by the IEP dated November 21, 2014. However, in the IEP dated November 20, 2015, Student was exited from special education and enrolled in general education kindergarten, where he was later told that the class could not meet his needs. The sworn declaration of Parent states that she consented to both IEP’s, but that she withdrew her consent to the November 20, 2015 IEP when Student’s enrollment in kindergarten was unsuccessful. Her declaration contains a copy of the November 21, 2014 IEP, which she seeks as stay put, but an incomplete copy of the November 20, 2015 IEP.

In this motion, Student seeks an order that District place Student in a special education class, and provide speech therapy, relying on Parent’s revocation of her consent to

the IEP of November 20, 2015, which found Student ineligible for special education and exited him from special education and related services.

Parent's unilateral revocation of consent to the IEP of November 20, 2015, because she feels that Student still requires special education support, is the basis of this due process dispute. However, her subsequent actions do not change the fact that the IEP of November 20, 2015, that exited Student from special education was Student's last agreed upon and implemented IEP at the time the dispute arose. Pursuant to that IEP, Student is not eligible for special education and related services pending completion of this due process proceeding.¹

Accordingly, Student motion for stay put is denied.

IT IS SO ORDERED.

DATE: January 07, 2016

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

¹ Nothing in this order shall be considered a finding as to whether District should have exited Student from special education services or Student eligibility.