

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT;
ORANGE COUNTY DEPARTMENT OF
EDUCATION & CALIFORNIA
DEPARTMENT OF EDUCATION.

OAH CASE NO. 2009090943

ORDER ON MOTION FOR STAY PUT

On September 22, 2009, Student filed a motion for stay put. In the motion, Student seeks a determination of which public agency is financially responsible for payment of his out-of-state residential placement at Daystar. The motion is not supported by any evidence that Student's continued attendance at Daystar, is in any way threatened pending resolution of the responsibility question at hearing. Irvine Unified School District (District) and Orange County Department of Education (OCDE) file oppositions on the ground that they are not legally responsible by operation of law. The California Department of Education did not file an opposition.

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, the current educational placement is typically the placement called for in the student's 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 light of the above, Student's placement during due process shall remain Daystar. However, the issue of which agency is financially responsible was raised by Student's due process hearing request and should be resolved only after taking evidence at hearing. In support of the stay put motion, Student presented no evidence showing that there is any urgency to resolution of the financial responsibility issue. The lack of urgency is highlighted by the fact that the January 15, 2009 IEP shows that Orange County Health Care Agency (OCHCA) was also financially involved in placing Student at Daystar, yet is not a party to the due process hearing request. Accordingly, the issue of financial responsibility is

premature absent some evidence that Student's continued attendance at his current placement is in jeopardy.

ORDER

1. Student's placement during the due process hearing is Daystar.
2. The issue of which agency is financially responsible for the placement is premature and is not addressed by this Order. Student may file a new motion for stay put if supported by evidence that Student's continued attendance at Daystar is jeopardized in some way by failure to resolve the financial responsibility issue prior to hearing.

Dated: October 06, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings