

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010040608

ORDER GRANTING MOTION TO
DISMISS AND DENYING MOTION
FOR STAY PUT WITHOUT
PREJUDICE

On April 6, 2010, Student filed a request for due process hearing challenging the appropriateness of her special education placement, goals and services under the IDEA, section 504 of the Rehabilitation Act, and title 42 United States Code section 1983. The request acknowledged that non-IDEA claims are subject to dismissal because they are outside OAH jurisdiction. The request also contained the title “Evocation of Stay Put” and a reference to a request to “evoke stay put” on page 23. However, the request did not contain any allegation as to what Student contends was the last agreed upon and implemented placement for purposes of stay put, nor any facts showing that the District was not complying with its stay put obligations. On April 15, 2010, District filed a motion to dismiss the non-IDEA claims because they are outside OAH jurisdiction. This Order addresses both the motion to dismiss and Student “evocation” of stay put.

First, the District’s unopposed motion to dismiss claims under section 504 of the Rehabilitation Act and title 42 United States Code section 1983 is granted. As acknowledged by Student, these matters are outside OAH jurisdiction.

As to Student’s “evocation” of stay put, it cannot be determined whether Student is making a motion for stay put based on the District not implementing a certain IEP that Student contends is the last agreed upon and implemented IEP, or whether Student is merely informing the District that she is aware of her right to stay put. Specifically, it cannot be determined from the due process hearing request whether there is any dispute between Student and District about what Student’s placement is while the due process hearing request is pending. Accordingly, to the extent Student’s “evocation” of stay put is a motion for stay put, the motion is denied without prejudice to Student making a formal motion if necessary. If a motion is necessary, Student should support it with evidence of what Student contends is the last agreed upon and implemented placement.

ORDER

1. All claims that the District violated either section 504 of the Rehabilitation Act or 42 United States Code section 1983 are dismissed for lack of jurisdiction.

2. Student's "evocation" of stay put is denied without prejudice to Student bringing a formal, written motion for stay put if there is a disagreement between District and Student over what her placement is while the due process hearing request is pending.

Dated: April 20, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings