

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011040665

ORDER DENYING MOTION FOR
STAY PUT AND ESTABLISHING
STAY PUT AS PROVIDED FOR IN
STUDENT'S NOVEMBER 16, 2009 IEP

On April 14, 2011, Student filed a motion for stay put concurrently with a complaint and dual request for expedited mediation and due process and regular mediation and due process hearing. On April 20, 2011, District filed an opposition to Student's motion for stay put. Neither party included a declaration under penalty of perjury authenticating the facts and exhibits referenced in and attached to their papers filed with OAH. For the reasons discussed below, Student's motion for stay put at a District general education campus high school 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); 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 (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old IEP as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel G v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134.)

DISCUSSION

Here, Student was first enrolled in the District in January 2011, after transferring from another District. Student was initially placed by District in a District high school. After approximately 10 days District moved Student to an independent study program off campus

in accordance with his last signed and implemented IEP dated November 16, 2009. The November 16, 2009 IEP provided that Student shall spend 100% of his educational day outside of the regular educational environment. No subsequent IEPs have been signed or implemented.

Student seeks as stay put the District high school at which District first placed him for 10 days in January 2011. However, the placement Student seeks as stay put is in the general education setting, and is therefore not compliant with Student's last signed and implemented IEP. Therefore, Student's request for stay put at a District high school in a general education setting is denied.

ORDER

Student's motion for stay put at a District general education high school is denied. Student's stay put is as provided for in his November 16, 2009 IEP – 100% of his educational day outside of the regular educational environment.

Dated: April 22, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings