

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MORGAN HILL UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011061147

ORDER DENYING DISTRICT'S
MOTION FOR STAY PUT; AND
GRANTING STUDENT'S MOTION
FOR STAY PUT

On July 29, 2011, Matthew Juhl-Darlington, attorney-at-law, filed a motion for stay put on behalf of the Morgan Hill Unified School District (District). On August 1, 2011, David H. Tollner, attorney-at-law, filed a motion for stay put on behalf of Student. Student also filed an opposition to District's motion for stay put.

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 (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

DISCUSSION

In District's motion for stay put, which is supported by the sworn declaration of Lisa Atlas, District's Director of Student Services, District contends that Sobrato High School Special Day Class (Sobrato SDC) is Student's stay put placement. District contends generally that the Sobrato SDC is a placement provided for in District's recent individualized education program (IEP) offers. Otherwise, District does not contend or provide any evidence to show that the Sobrato SDC is either the current educational placement for

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

Student, or that such placement was called for in the last agreed-upon and implemented IEP for Student.

In Student's motion for stay put, supported by the sworn declaration of Mr. Tollner, Student contends that Stanbridge Academy (Stanbridge) is the stay put placement for him based on his last agreed-upon and implemented IEP dated June 3, 2010. Student enclosed the notes from the June 3, 2010 IEP team meeting, which support his contention.

The record fails to support District's contention that Student is a "unilaterally placed private school student." Instead, Student has resisted District's efforts to remove him from Stanbridge into a different placement. The evidence submitted shows that Student was placed at Stanbridge pursuant to his June 2010 IEP. Further, District argues that because Stanbridge is not a certified private school, OAH may "not render a decision that results in the placement of a special education student in a nonpublic, nonsectarian school, or ... nonpublic, nonsectarian agency, if the school or agency has not been certified pursuant to Section 56366.1." Here also, District's argument is not persuasive. OAH's order granting Student's motion for stay put merely ensures that the status quo is maintained during the pendency of Student's due process hearing request as required by law. Thus, granting Student's motion for stay put would not result in a new placement for Student, but rather his current placement as provided for in his existing, currently agreed-upon and implemented IEP.

Overall, the record shows that Student has attended Stanbridge, a non-certified non public school for the past five school years (SYs). He has also attended the school since the beginning of the 2010-2011 SY pursuant to his last agreed-upon and implemented IEP. District has been paying for him to attend the school. Pursuant to the IDEA, because Student is entitled to remain in his current educational placement until due process hearing procedures are complete, Stanbridge is stay put for Student.

Therefore, based on the foregoing discussion, District motion for stay put is denied, and Student's motion for stay put is granted.

ORDER

1. District's motion of stay put is denied.
2. Student's motion for stay put is granted.
3. For the purposes of this Due Process hearing request, Stanbridge Academy is stay put for Student.

Dated: August 04, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings