

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2011080184

ORDER DENYING MOTION FOR
STAY PUT

On September 19, 2011, Parent’s attorney filed a motion for stay put on the grounds that Student is entitled to stay put after he turns 22 years old on October 4, 2011 until due process issues in this case are resolved. The motion was not supported by a declaration under penalty of perjury or any evidence, including a copy of Student’s last agreed upon and implemented individual education plan (IEP). On September 21, 2011, District’s counsel filed a response to the motion, arguing that the motion was moot because District does not intend to change Student’s placement until the issues in his complaint were resolved in due process. District’s response was also not supported by a declaration under penalty of perjury.

APPLICABLE LAW AND DISCUSSION

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.)

Student is entitled to remain in his last agreed upon and implemented placement while a dispute is pending and an order for stay put is generally not required unless a dispute over placement exists. Student contends that District intends to change his placement during due process, without supporting his assertion with any evidence. Although District’s counsel asserts that District will continue providing services within Student’s current educational placement, the assertion is also not supported by a declaration under penalty of perjury from a District representative. Therefore, neither party has established by relevant evidence

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

whether a dispute over placement during due process exists. Additionally, Student has not established what placement and related services should be considered as stay put.

If a dispute exists as to Student's placement, Student may file a request for stay put with more specificity as to the nature of the dispute and the terms of stay put, including a copy of the last signed IEP. Accordingly, the motion for stay put is denied.

IT IS SO ORDERED.

Dated: September 23, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings