

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN RAMON VALLEY UNIFIED
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011080735

ORDER GRANTING MOTION FOR
STAY PUT

On October 6, 2011, Student filed a motion for stay put. On October 10, 2011, the San Ramon Valley Unified School District (District) filed an opposition. Student filed a reply to the opposition on October 10, 2011.

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.) In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

DISCUSSION

The dispute in this matter arose on August 18, 2011 when District filed a request for a due process hearing (complaint). On October 6, 2011, Student filed a motion for stay put (motion) requesting that District maintain her current placement and related services at Arbor Bay School (Arbor Bay), a non-public school, pursuant to her last agreed-upon and

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

implemented IEP, pending the resolution of the dispute as set forth in District's complaint. In support of her motion, Student provided the IEP dated February 26, 2009, and the Addendum dated July 17, 2009, as her last agreed upon and implemented IEP prior to the dispute arising in this matter.

Initially pursuant to a settlement agreement, and most recently pursuant to her IEP, Student has attended Arbor Bay since first grade, the 2007-2008 school year (SY). She was placed at Arbor Bay during the 2010-2011 SY and completed her fifth grade during that SY. Therefore, Arbor Bay is the current educational placement for Student pursuant to her most recently agreed upon IEP dated February 26, 2009, and the July 17, 2009 Addendum that has been implemented prior the filing of the complaint herein.

District opposed Student's motion for stay put, essentially on the ground that Student motion for stay is untimely because the motion failed to comply with the Office of Administrative Hearings' (OAH's) order dated September 16, 2011, which directed the parties to show good cause, by a declaration under penalty of perjury, why any motion filed after the prehearing conference (PHC) of September 14, 2011 could not have been filed prior to or during the PHC. District is correct in its assertion that Student's motion for stay put does not include a declaration or a showing of good cause.

However, the above referenced direction contained in the OAH's order relates mainly to the conduct of the hearing regarding the issues that have been identified in the due process complaint and the procedures thereto. It was not intended to abrogate Student's right to stay put protection under the Individual with Disabilities Education Act (IDEA). Therefore, District's argument that Students' failure to comply with the referenced OAH deprives her of her stay put right is not persuasive. The referenced OAH's order could not reasonably be interpreted to imply that District's statutory obligation under IDEA to maintain stay put for Student, a special education student, during the pendency of this dispute, is relieved, if Student failed to submit a declaration with her motion.

Therefore, based on the sworn declaration of Susan Foley, the attorney for Student, and the available record herein, Student's last agreed upon and implemented IEP is the February 26, 2009, and the July 17, 2009 Addendum. Student is entitled to the placement, supports and services offered to her in that IEP and Addendum during the pendency of the current due process proceeding. Accordingly, Student's motion for stay put is granted.

ORDER

Student's motion for stay put is granted.

Dated: October 11, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings