

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011080980

ORDER DENYING MOTION FOR
STAY PUT

On August 23, 2011, Student filed a motion for stay put. The Office of Administrative Hearings (OAH) did not receive a response from the San Francisco Unified School District (District).

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.)

Stay put does not apply when a child transitions from an early education program to a special education program upon reaching the age of three. (Ed. Code, § 56505, subd. (d); see 34 C.F.R. § 300.518(c).)

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

DISCUSSION

Student has not had an educational placement in District since enrolling in the District when he turned three years old. On May 9, 2011, OAH issued a Decision, in a prior case involving Student, that determined that Student's private placement, at Serra Preschool and services from Steps Therapy Inc., a nonpublic agency, was appropriate for the purposes of granting compensatory education and reimbursement, and ordered the District to conduct an IEP team meeting within 45 days of the decision. The May 9, 2011 decision did not order prospective placement of Student at Serra Preschool or Steps Therapy Inc, the placement he now seeks as stay put, and thus, cannot be used as the basis for stay put.

On June 8, 2011, District held an IEP team meeting consistent with the order from the May 9, 2011 Decision. On June 13, 2011, a written IEP was sent to Parent that offered extended school year (ESY) services for 2011 which provided Student with continued placement in the private placement that had District had been ordered to reimburse under the May 9, 2011 Decision. For school year (SY) 2011-2012, District offered placement within the Presidio special day class as well as applied behavioral analysis (ABA) services for 30 hours per week, among other services. Parents only accepted the ESY services offered by District and explicitly rejected the offer for services for SY 2011-2012.

The purpose of special education during the ESY is to prevent serious regression over the summer months. It is distinctly different than the purpose of special education during the regular school year and the responsibilities of a school district are accordingly different in comparison to the ESY. The documentation establishes that the District's offer of continuing Student's private placement was limited to the ESY period only. Student has failed to provide any authority to support his contention that placement and services agreed upon and implemented during ESY can constitute stay put for the regular school year. Accordingly, Student's motion for stay put is denied.

ORDER

1. Student's request for stay put is denied.

Dated: September 14, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings