

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST COVINA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012010182

ORDER DENYING MOTION FOR
STAY PUT

On January 10, 2012, Student filed a motion for stay put, which was unsupported by any authenticated evidence establishing what the terms of stay put should be. On January 13, 2012, District filed on opposition, supported by declarations under penalty of perjury. Student filed a Reply to District's opposition on January 17, 2012, which attached an unauthenticated copy of Student's January 14, 2009 initial IEP. For the reasons discussed below, the motion for stay put 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)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.)

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,

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

subd. (a)(1); see *Ms. S. ex rel G v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134.)

DISCUSSION

Student's motion for stay put asserts that Student was enrolled in the District at the time his initial IEP was developed in January 2009. His placement and school of residence at that time was within District. He thereafter left District and became part of the juvenile court system. His last educational placement, from January through December 22, 2011, was provided through the Los Angeles County Office of Education (LACOE) pursuant to orders by the Department of Children and Family Services. On January 3, 2012, Student's guardian/grandmother unsuccessfully attempted to re-enroll Student at District's West Covina High School. Student argues that District's refusal to offer him an interim placement at West Covina High School was inappropriate. As such, Student seeks stay put at West Covina High School.

District's opposition asserts that Student's stay put motion is premature because Student never informed District that he was eligible for special education before filing his due process complaint, nor did he provide District with a copy of his last signed and implemented IEP. District also contends that Student "is transferring" into the District from a school district in a different SELPA and that District had not yet had the opportunity to meet with Student's guardian or to offer Student a 30-day interim placement at a District school before Student's complaint was filed.

Because Student has offered no evidence that District has admitted Student or made him an interim offer of placement upon which to base stay put, Student has not met his burden of establishing that he is entitled to stay put at West Covina High School. Student has also not established through any authenticated evidence what the terms of the status quo should be. Student's attorney argues that the January 14, 2009 initial IEP created by District is the "only one in my possession," which is insufficient by itself to establish that stay put should be based upon that IEP or that West Covina High School is the stay put placement. Moreover, the issue of whether or not District failed to offer Student an appropriate and timely interim placement must be decided by the hearing judge, and not through a motion for stay put, which, as discussed above, is intended to be a temporary remedy to preserve the status quo until due process disputes are resolved. In sum, stay put must be denied because the January of 2009 IEP was not the status quo prior to the dispute arising.

ORDER

Student's motion is denied. If Student chooses to re-file his motion for stay put, his motion must be supported by *authenticated* evidence including a copy of the last agreed upon and implemented IEP, or interim offer, upon which stay put should be based.

Dated: January 19, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings