

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA CLARA COUNTY OFFICE OF
EDUCATION, CUPERTINO UNION
SCHOOL DISTRICT, AND STATE OF
CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES.

OAH CASE NO. 2012080386

ORDER DENYING MOTION FOR
STAY PUT

On August 13, 2012, Christian M. Knox, attorney for Student, filed a request for a due process hearing (complaint) with the Office of Administrative Hearings (OAH) naming the Santa Clara County Office of Education (County), the Cupertino Union School District (District) and the California Department of Health Care Services (CCS). On August 13, 2012, Student filed a concurrent motion for stay put. On August 16, 2012, Jeffery W. Maisen, attorney for the County and the District filed an opposition.

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.)

However, if a student’s placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student’s “stay put” placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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

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

Student is ten years old and eligible for special education based upon an orthopedic impairment. Student has been attending a special day class (SDC) at Taylor Elementary School (Taylor) pursuant to a March 8, 2011 IEP. Beginning in March of 2012, Student and the District and County participated in a series of IEP team meetings. The last IEP team meeting convened on June 13, 2012. At this meeting, the District and County offered a temporary diagnostic placement at Blackford Elementary School (Blackford) through September 30, 2012. The Parents support placement at Blackford, but disagree with it being characterized as a temporary placement. Student seeks an order identifying Blackford as his stay put placement.

The Parents did not sign the consent signature page to the June 13, 2012 IEP document. In a separate document entitled “Parent Addendum to IEP dated June 13, 2012” the Parents authorized the implementation of the June 2012 IEP with exceptions, noting their disagreement to the placement at Blackford being a diagnostic placement. Thereafter, on August 7, 2012, the District informed the Parents through an electronic correspondence that since the Parents did not agree with the diagnostic nature of the placement offer at Blackford, than Student would not be allowed to attend Blackford and would need to return to Taylor.

Attached to Student’s motion for stay put are the March – June 2012 IEP documents, the Parent Addendum dated June 13, 2012 and signed by the Parents on July 22, 2012, and the electronic correspondence from the District to the Parent dated August 7, 2012. The District and County’s opposition to Student’s motion is supported by an attached declaration from Carolina Lluria, a cluster principal employed by the County, and the March 8, 2011 IEP document. The District and County oppose Student’s motion for stay put on the grounds that the Parents never consented to the Blackford diagnostic placement offer, that this proposed placement was never implemented, and that it was specifically intended as a temporary placement which does not give rise to a stay put right.²

The dispute in this matter is over what constitutes the last authorized and implemented IEP placement for Student. Student argues that the last authorized IEP is the June 13, 2012 offer of a placement at Blackford, and that Blackford should constitute his stay put placement through the resolution of this dispute, or at least through September 30, 2012.

² The District and County also contend that Student’s motion should be denied on the basis that it does not provide sufficient supporting evidence by way of declaration. Because this Order will deny Student’s motion on substantive grounds, there is no need to address any alleged evidentiary deficiencies.

Student contends that his Parents agreed to the placement offer, just not the characterization of the placement as temporary. The District and County argue that the March 8, 2011 IEP constitutes the last agree upon and implemented IEP with Student's stay put placement being the SDC at Taylor. The District and County argue that the Parents did not sign consent for the June 13, 2012 IEP. Furthermore, in their Addendum of July 22, 2012, while the Parents authorized implementation of the IEP it was with exceptions, namely, that they failed to accept the specific offer of a diagnostic placement at Blackford. The District and County's position is that Student cannot accept an offer that has not been made. The District and County's argument is persuasive.

A placement subject to the pendency provisions of the Individuals with Disabilities Education Act is the operative placement at the time a dispute arises, not a new placement proposed by an IEP. (See *Thomas v. Cincinnati*, *supra*, 918 F.2d 625-26 ["Because the term connotes preservation of the status quo, it refers to the operative placement actively functioning at the time the dispute first arises."].) The June 13, 2012 IEP was never implemented due to lack of parental consent to the specific offer of Blackford as a temporary, diagnostic placement. As such, the June 2012 placement offer cannot constitute the then-current educational placement of the Student. In addition, Student's own supporting documentation clearly indicates that the Parents signed consent to the May 2, 2012 IEP document wherein the District and County were offering Taylor as the permanent placement. Student's stay put placement is at Taylor, and that was Student's placement until the end of the 2011-2012 school year.

The primary purpose of the stay put provision is to maintain the status quo and thereby ensure the stability of the student's educational program during a due process dispute and prevent unilateral changes in that program by the school district. (*K.D. v. Department of Educ.* (9th Cir. 2011) 665 F.3d 1110, 1120; see 34 C.F.R. § 300.518 (a).) The goals of educational stability and preventing unilateral placement changes by a district are not served by the relief Student seeks in this case. Student has never attended Blackford. Denying Student's motion will not result in any upheaval for the Student who will remain in his placement at Taylor.

Even if the District and County had implemented Student's placement at Blackford, they are correct that the descriptions of this placement as "diagnostic," "temporary," lasting "through September 30, 2012 only," and not constituting stay put, prevent Student from obtaining the remedy of Blackford as a stay put placement through the resolution of the complaint. Student himself concedes this as a likely outcome when he requests, in the alternative, stay put at Blackford "at least until September 30, 2012." Student's recourse is to consent to the temporary placement as offered by the District and County. The District and County offered a temporary diagnostic placement at Blackford in an attempt to obtain Parental consent to the June 2012 IEP. They clearly indicated that at the time of the offer, they considered Student's permanent and most appropriate placement to be at Taylor. When the Parents withheld consent, the District and County chose to not implement Parent's counter-offer.

Student has failed to prove that the June 13, 2012 IEP was the last agreed upon and implemented IEP. Therefore, Student's motion for stay put is denied.

ORDER

Student's motion for stay put is denied.

Dated: August 20, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings