

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013020224

ORDER DENYING MOTION FOR
STAY PUT

On February 12, 2013, Student filed a motion for stay put. Elk Grove Unified School District (EGUSD) filed an opposition to the motion on February 15, 2013.

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) 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.)

When individuals with exceptional needs are placed in a licensed children’s institution (LCI) by a public agency, other than an educational agency, the “special education local plan area (SELPA) shall be responsible for providing appropriate education to individuals with exceptional needs residing in licensed children’s institutions . . . located in the geographical area covered by the local plan.” (Ed. Code §§ 56155, 56156.4(a).)

DISCUSSION

Student is a 14 year old student, eligible for special education, who was adopted and is eligible for the Adoption Assistance Program (AAP). The student is currently placed at Milhous Children’s Services (Milhous), located in Sacramento California.

Student was placed at Milhous on February 7, 2013, following her release from juvenile custody on February 6, 2013. Student was placed at Milhous through an agreement between Alameda County Social Services Agency, Adoption Assistance Program and

Student's mother. Student's placement at Milhous is funded by Alameda County Social Services Agency, Adoption Assistance Program.

Student provided a copy of Milhous' license as a group home from the State of California, Department of Social Services effective October 26, 1999.¹ Milhous, as a group home, clearly falls under the definition of an LCI. Student also provided OAH with the AAP agreement indicating that AAP would fund student's non-educational costs at Milhous and that the funds would be paid directly to Milhous.

The Alameda County Social Services Agency, which administers the AAP, is a public agency that is not an educational agency. Therefore, Student's placement at Milhous meets the requirements of California Education Code sections 56155 and 56156.4(a). The Special Education Local Plan Area where Milhous is located bears responsibility for Student's education while she is placed at Milhous under the AAP agreement.

However, Student has not alleged any facts regarding the SELPA where Milhous is located. Student has not alleged any facts to support her contention that EGUSD bears any financial responsibility for Student while she is placed at Milhous.

Therefore, without reaching the merits of the Stay Put motion, the Motion for Stay Put against EGUSD is denied because Student has not pled facts sufficient to determine whether Elk Grove School District is a proper party to any determination of stay put.

ORDER

The Motion for Stay Put is denied without prejudice.

Dated: February 19, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings

¹ Student filed her Due Process Complaint and Motion for Stay Put, with supporting attachments, on February 6, 2013. After Student was notified that she must file the Motion for Stay Put as a separate motion, Student re-filed the Stay Put Motion on February 12, 2013, relying on the attachments from the original Complaint and Motion. All references to documents in this order are from the Original Complaint and Motion.