

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2013090852

ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
STAY PUT

On September 24, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint) naming the Sequoia Union High School District (District) as respondent. In his complaint, Student contends that he is entitled to be placed at the Maple Lake Academy for Boys (Maple Lake) in Utah, a residential treatment center (RTC), and his parent to be reimbursed for any costs associated with his unilateral placement at Maple Lake.

On September 27, 2013, Student filed with OAH a motion for stay put. On October 1, 2013, the District filed an opposition. Student filed with OAH a response to the District's opposition on October 2, 2013. On October 3, 2013, the District filed a response to Student's reply.

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.)

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

FACTS

Student is 16 years old and was found eligible for special education and related services on May 27, 2009, under the category of Emotional Disturbance (ED). Student has had a complicated psychiatric history, social/emotional problems, and behavioral difficulties. In November 2011, Student attended the Menninger Clinic of Texas. After being discharged from Menninger, Student's parent (Parent) unilaterally placed him at an RTC in Colorado, Forest Heights Lodge (FHL), after a dispute arose between the District IEP team and Parent as to placement.

Student filed an action with OAH which was resolved by settlement permitting Student to be placed through May 2013 at FHL

On May 15, 2013, Student's IEP team convened for his annual IEP meeting. Parent consented to this IEP on that date. The IEP calls for extended school year placement at FHL, from June 17, 2013 through August 6, 2013, with the following services: 1050 minutes per day of specialized academic instruction; one 60 minute individual counseling session per week; one 60 minute counseling and guidance session per week; one 60 minute session of parental counseling; and 1440 minutes daily of residential treatment services.

The May 15, 2013 IEP also provided for placement at a "nonpublic residential school-outside California," from May 15, 2013 through September 30, 2013, with the following services: 1590 per day of specialized academic instruction; one 60 minute individual counseling per week; one 60 minute counseling and guidance per week; one 60 minute session for parental counseling; and 1440 minutes daily of residential treatment services.

On July 12, 2013, FHL informed the District that Student would be discharged on August 6, 2013 because Student had attained his treatment and IEP goals.

On July 16, 2013, Student's attorney forwarded a letter to Dr. Deborah Toups, the District's special education director, acknowledging that the District had "identified three placements for consideration by the IEP team." One placement was at a therapeutic day treatment program, Palo Alto Prep, and two Utah based residential treatment programs. The letter states that the two residential programs were not acceptable because the student populations at both were not appropriate. Student's attorney concluded thusly: "Absent a formal and appropriate offer of placement for [Student] on August 12, 2013, my client (Parent) intends to place [Student] on August 12, 2013, in Maple Lake Academy for Boys, in Spanish Fork, Utah."

On July 22, 2013, Dr. Toups forwarded a letter to Parent replying to the July 16, 2013 letter. Dr. Toups states: "The District is offering an IEP meeting in early September (the IEP notice to follow). The District had hoped that FHL would have worked more closely with us to assist with the transition, but we had no word from them until the notice to release [Student]." Dr. Toups went on to state:

We need access to [Student] as well so that we can review his needs, goals, and next steps. I understand from your attorney that Charis and TLC (the proposed residential placements) are not appropriate because of the type of students there. The District does not offer placement solely on the type of students in attendance.”

On August 12, 2013, Parent unilaterally placed Student at Maple Lake.

DISCUSSION

As stated above, stay put is based on the last agreed to and implemented IEP. Here, that IEP is the May 15, 2013 IEP. Because of the unexpected discharge of Student by FHL, the District is responsible for implementing the placement and services called for in that IEP, and the District must be given an opportunity to offer a placement as close as possible to FHL as called for in the May 15, 2013 IEP. Parent is not free to unilaterally place Student in a placement of her choice and expect that placement to be the stay put placement.

ORDER

1. Student’s motion for stay put is granted in part and denied in part. Student’s motion to be offered a stay put placement is granted. Student’s motion to be placed at Maple Lake Academy for Boys is denied.

2. Within seven days of the service of this Order, the District shall offer Student placement and services consistent with Student’s May 15, 2013 IEP as follows:

- (a) Placement at a nonpublic residential treatment center outside the State of California;
- (b) 1590 minutes per day of specialized academic instruction;
- (c) one 60 minute individual counseling per week;
- (d) one 60 minute counseling and guidance per week;
- (e) one 60 minute session for parental counseling; and
- (f) 1440 minutes daily of residential treatment services.

Dated: October 02, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings