

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SCHOOL OF UNLIMITED LEARNING  
AND FRESNO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2013120568

ORDER DENYING STUDENT'S  
MOTION FOR STAY PUT

On December 17, 2013, Student filed a motion for stay put. No opposition has been received.

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)<sup>1</sup>; 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.)

DISCUSSION

Student's complaint alleges that Student was denied a free appropriate public education (FAPE) because Fresno Unified School District (Fresno USD) implemented an IEP dated December 10, 2012, “without Parent signature page” documenting parental consent. Student also alleges that she was denied a FAPE because Student was expelled from Fresno USD after a December 9, 2013 manifestation determination meeting without the procedural protections of the Individuals with Disabilities Education Act (20 U.S.C., §§

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

1400, et seq.). Student seeks an order that her stay put placement and services be as set forth in a March 7, 2012 IEP written when Student attended Washington Unified School District, which Student contends is her last agreed upon and implemented IEP.

The complaint alleges, and the sworn declaration of Parent filed in support of Student's stay put motion states, that the signature page of the December 10, 2012 IEP is "void." This suggests that Parent did in fact sign the IEP and consent to its implementation. The complaint expressly alleges that Fresno USD implemented the December 10, 2012 IEP, and if Parent consented to that IEP at any time, the December 10, 2012 IEP would be the last agreed upon and implemented IEP for stay put purposes.

Student's complaint states that a copy of the December 10, 2012 IEP is attached to the complaint, but it is not. Parent's declaration in support of the motion for stay put also states that the December 10, 2012 IEP is attached, but only three pages of an incomplete copy of what appears to be a portion of that IEP are included in the attachments. The attachment does not include a signature page.

If the December 10, 2012 IEP was agreed upon, as well as implemented, it is later in time than the March 7, 2012 IEP, and would be the operative IEP for purposes of determining stay put placement and services. However, without a complete copy of the December 10, 2012 IEP, including the signature page, it cannot be determined whether or not Parent consented to implementation of the December 10, 2012 IEP. Accordingly, Student's motion for stay put is denied.

IT IS SO ORDERED.

Dated: December 27, 2013

/s/

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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings