

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT .

OAH Case No. 2014100916

ORDER DENYING MOTION FOR
STAY PUT

On October 22, 2014, Parent on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint) and Request for Stay Put naming the Oakland Unified School District as respondent. In his request for stay put, Student merely states: "Petitioner hereby invokes the 'stay put' provisions of 20 U.S.C. (§ 1415(j) unless and until agreement or final resolution of this matter has been achieved." (Complaint, p.1.) Student fails to provide any further information.

On October 28, 2014, Oakland filed with OAH an opposition to Student's Request for Stay Put.

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); 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, 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; *G.M. v. Dry Creek Elementary School District* (E.D. Cal., Dec. 10, 2010) 2010 WL 5136181 at *2.)

Stay put is designed to preserve the status quo by insuring that the child remains in the last placement that the school district and parents agreed was appropriate. (*Millay v. Surry* (D. Me. 2008) 584 F.Supp.2d 219, 230-231, citing *Verhoeven*, 207 F.3d at p. 10.)

DISCUSSION

Oakland filed a due process complaint in OAH Case Number 2013040377 on April 8, 2013 seeking an order from OAH that its May 2013 IEP, which involved school year 2013-2014, was appropriate. On October 4, 2013, OAH issued a Decision in that matter in which Oakland prevailed. Student then filed with the United States District Court for the Northern Division of California an action which appealed OAH's October 4, 2013 decision. On December 12, 2013, Student filed a motion for a preliminary injunction to enforce stay put with the USDC. On February 25, 2014, the District Court issued an order determining Student's stay put.

In its opposition, Oakland contends that the District Court order establishes stay put in this matter as the District Court order involves what is contained in the last implemented and agreed IEP, which is the May/September 2011 IEP. In reviewing the District Court order, the last implemented and agreed to IEP was in 2011. Thus, stay put would be that established by the District Court February 25, 2014 order. Since, Oakland does not dispute that the District Court order establishes stay put in this matter, there is no dispute as to what stay put is. Accordingly, Student's motion is denied.

ORDER

The motion is hereby DENIED as Student's stay put is set forth in the District Court's February 25, 2014 order.

DATE: October 30, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings