

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT(S) ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2015060967

ORDER DENYING STUDENT'S
MOTION FOR STAY PUT

NOTICE: The United States District Court has issued an Injunction overturning this Order and granting Student's Motion for Stay Put. Click [here](#) to view the USDC's Order.

On June 24, 2015, Student filed a motion for stay put. On June 29, 2015, District filed an opposition. As discussed below, the motion is denied.¹

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.)

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 On June 30, 2015, Student filed a Notice of Intent to Respond to District's Opposition. OAH generally does not contemplate responses to oppositions. Moreover, given the limited grounds of this Order, and the numerous alternate arguments raised by the parties, this Order should focus the issues such that the parties' contemplated further filings may become unnecessary.

DISCUSSION

Here, the IEP on which Student relies placed Student in a nonpublic school on a temporary basis, explicitly stating that the nonpublic school would be funded only until June 30, 2015. According to the legal authorities cited above, a temporary placement does not form a basis for stay put. For this reason, Student's motion is denied.

District's other arguments contend that Student did not establish residency within District, and that District's offer of placement and services was "comparable" to the nonpublic school for purpose of stay put. These are not addressed herein. The basis for this Order is that Student seeks as stay put a placement that was explicitly temporary, and thus the motion is denied.

IT IS SO ORDERED.

DATE: June 30, 2015

/s/

JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings