

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015061180

ORDER DENYING STUDENT'S
MOTION FOR STAY PUT

On June 24, 2015, Student filed a request for due process hearing (complaint) and a motion for stay put. On June 29, 2015, District filed an opposition to Student's motion. Student filed a reply in support of his motion on June 29, 2015, and District on July 30, 2015 filed a reply in opposition to Student's reply.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is generally 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.)

If a dispute exists concerning a student's right to stay put, or concerning the specific educational placement constituting stay put, either party may file a motion for stay put seeking a determination of the student's stay put placement.

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

DISCUSSION AND ORDER

Student's complaint alleged that Student turned 22 on June 15, 2015, and was attending Cleta Harder, a non-public school, under Student's existing individualized education program. The complaint alleged that Student and District agreed that Student was entitled to extended school year services in summer 2015, to be provided at Cleta Harder pursuant to his IEP and Education Code section 56026, but that District at the time of the complaint had not contracted with Cleta Harder to provide extended school year services to Student. Student's motion for stay put seeks an order directing District to provide Student extended school year services at Cleta Harder.

District's opposition to Student's motion agreed that Student is entitled to receive extended school year services at Cleta Harder. District submitted the sworn declaration of District's Director of Special Education stating that District intends to maintain Student's extended school year placement at Cleta Harder, is completing a contract with Cleta Harder, and has received assurances that student will be allowed to remain at Cleta Harder during the 2015 extended school year.

Student's complaint and stay put motion, and District's opposition and supporting sworn declaration, all agree that District is obligated to provide Student extended school year services at Cleta Harder, and District has stated that it will provide those services. Student is entitled to remain in his last agreed upon and implemented placement while a dispute is pending and an order for stay put is generally not required unless a dispute over placement exists. There is no dispute as to Student's right to stay put or what combination of facilities, personnel, location or equipment are necessary to provide Student an appropriate stay put placement, and no basis for an order directing District to provide Student a placement to which it has already agreed. Accordingly, Student's motion for stay put is denied.

ORDER

Student's motion for stay put is denied.

DATE: July 9, 2015

/s/

ROBERT MARTIN

Administrative Law Judge - Challenged
Office of Administrative Hearings