

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNION  
SCHOOL DISTRICT AND KERN  
COUNTY OFFICE OF EDUCATION AKA  
KERN COUNTY SUPERINTENDENT OF  
SCHOOLS.

OAH Case No. 2016020421

ORDER DENYING MOTION FOR  
STAY PUT

On February 9, 2016, Student filed a request for due process hearing and a motion for stay put, seeking stay put placement at Student's home school in Panama-Buena Vista Union School District. On February 16, 2016, District filed an opposition to Student's motion. Kern County Office of Education aka Kern County Superintendent of Schools (KCSOS) did not file a response to Student's motion

APPLICABLE LAW

Until due process hearing procedures are complete, a child with a disability 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." The purpose of stay put is to maintain the status quo of the child's educational placement during the pendency of the hearing. (*See Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35; *Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625-26.) The current educational placement for stay put is the operative placement actually functioning at the time the dispute arises. (*Thomas, supra*, 918 F.2d at p. 625.)<sup>1</sup>

DISCUSSION

Student is 13 years old and resides in District.

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<sup>1</sup> This is typically, but not always, the placement called for in the student's last individualized education program implemented prior to the dispute arising. (*Vashon, supra*, 337 F.3d at p. 1135.)

At a February 2007 individualized education program team meeting, District found Student eligible for special education under the category of speech and language impairment. To address a moderate stuttering disorder, Student received 40 minutes per week speech services and continued placement in a general education classroom at his home school.

Student's February 2008 IEP stated that Student had met his goals and objectives, and no longer required speech services or special education. The IEP indicated that Parent consented to Student's exiting special education, and District stopped providing Student special education services. Parent contends she did not give consent, and the issue remains to be decided at hearing.

After his 2008 IEP, Student moved from District. When he returned to District in August 2014, Student did not have an IEP.

Student began experiencing disciplinary problems in fall 2014. Student's attorney requested Student's educational records in October 2014 and received copies of Student's 2007 and 2008 IEP's in November 2014. Student's attorney became aware in November 2014 of alleged discrepancies in Student's 2008 IEP, and the IEP's alleged improper termination of Student from special education.

Student was expelled from District in January 2015. An expedited decision by OAH in January 2015 determined that Student was not entitled to disciplinary procedural protections applicable to children with disabilities, because Parent had refused to allow District to assess Student for special education.

District subsequently assessed Student, and at a March 2015 IEP found him eligible for special education under the categories of emotional disturbance and other health impairment. District offered Student placement in a general education class at Sillect Community School operated by KCSOS, and services intended to address his special education needs. Parent refused to consent to the March 2015 IEP, and it was not implemented.

Although Student had no implemented IEP, for reasons not explained in Student's motion or District's opposition, he attended Sillect Community School.

On February 9, 2016, when Student filed a request for due process hearing and a motion for stay put, he was enrolled in Sillect Community School, but was receiving home hospital and not attending his school of enrollment. The reasons why Student was receiving home hospital, and whether that situation was temporary, with Student expected to return to Sillect Day School, were not explained.

When Student filed his complaint on February 9, 2016, his operative, actually functioning placement was either home hospital, or Sillect Day School operated by KCSOS. It was not his home school in District.

Student seeks a general education placement with services and supports based on a 2007 IEP that has not been Student's educational program in eight years, and that provided a general education placement and speech services unrelated to Student's current needs in the areas of emotional disturbance and other health impairment. Because the requested placement did not constitute Student's operative placement or status quo at the time of the complaint, Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: February 24, 2016

DocuSigned by:  
  
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ROBERT G. MARTIN  
Administrative Law Judge  
Office of Administrative Hearings