BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ACALANES UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2024080177

ORDER DENYING MOTION FOR STAY PUT

AUGUST 28, 2024

On August 5, 2024, Parent, on behalf of Student, filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Acalanes Union High School District as respondent. On August 7, 2024, Student filed a motion for stay put. OAH received no response to the Stay Put motion from Acalanes.

On August 14, 2024, the undersigned issued an order requiring additional evidence for the stay put determination. Student was instructed to file a copy of the most recent, consented to and implemented IEP document, including any amendments to that IEP, that clearly shows Parents' consent. Acalanes was offered the opportunity to respond regarding the documents filed.

In response to the order requiring additional evidence to establish Stay Put, Student filed a declaration authenticating five different IEPs, including one it acknowledged was unsigned. None of the five was designated as the last signed and consented to IEP.

Acalanes filed a document called "District's stipulation regarding stay put" which is signed only by District's counsel. It did not comment on Student's filing. Instead, following several statements Acalanes asserts are "undisputed" without any confirming signature from Student, the document ends by asserting that the "last agreed upon and implemented IEP, through the end of the 2024-25 school year, is the March 5, 2024, IEP." The March 5, 2024, IEP, however, only offered services through March 29, 2024; not through the end of the school year as Acalanes alleged.

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 last agreed upon and implemented individualized educational program, called IEP, placement prior to the dispute arising. ((L.M. ex rel. Sam M. v. Capistrano Unified School District (9th Cir. 2009) 556 F. 3d 900, 902.) However, some exceptions apply to that rule. (Johnson v. Special Education Hearing Office (2002) 287 F. 3d 1176, 1180, 1181; Ms. S. ex rel. G. v. Vashon Island School Dist. (9th Cir. 2003) 337 F.3d 1115, 1133 [rev'd on other grounds].)

INADEQUATE PROOF OF STAY PUT

Student has not met his burden of establishing the last IEP offer that was consented to and implemented. Student's motion for Stay Put identifies the September 22, 2023, IEP as Student's last consented to and implemented IEP. Without explanation, Student included another unsigned copy of the September 22, 2023, IEP with the documents filed in response to the Order Requiring Additional Evidence for Stay Put. Acalanes asserts the March 5, 2024, IEP amendment is the last consented to and implemented IEP but that is not confirmed by Student. Student has failed to establish which IEP is the last consented to and implemented IEP. Therefore, the request for Stay Put is denied.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings