BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. RESCUE UNION SCHOOL DISTRICT.	OAH Case No. 2018080977 ORDER DENYING MOTION FOR STAY PUT

On August 24, 2018, Parent on behalf of Student, filed for a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Rescue Union School District.

On August 24, 2018, Student filed a motion for stay put, requesting an order directing Rescue to continue to provide her with 500 minutes a week of specialized academic instruction, as stated in her last consented-to IEP, dated May 22, 2017. Student argues that her May 2, 2018, IEP was not finalized. Additionally, Student contends that Rescue's prior written notice on June 2, 2018, stated that she was receiving 350 minutes a week of specialized academic instruction, thus, admitting that it is was not implementing her last consented-to IEP.

On August 29, 2018, Rescue filed opposition to Student's stay put motion declaring no controversy, as it agrees that the May 22, 2017, IEP is the last agreed-to IEP, and that the 350 minutes stated in the prior written notice document is a typographical error. Rescue maintains that Student is receiving 500 minutes of specialized academic instruction, despite the error in the notice. Because of this, Rescue believes that no dispute exists that requires a stay put order.

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)[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

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

program, 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, subd. (a).)

DISCUSSION

Student is entitled to remain in her last agreed upon and implemented placement while a dispute is pending. An order for stay put is generally not required unless a dispute over placement exists. Rescue established through counsel's declaration that Student is currently receiving 500 minutes of specialized academic instruction per week, and that the June 2, 2018, prior written notice showing 350 minutes for specialized academic instruction per week was in error. Moreover, Rescue agrees that the May 22, 2017, IEP is the last consented-to IEP. Thus, no current controversy exists that requires a stay put order, and the motion is denied as unnecessary.

IT IS SO ORDERED.

DATE: September 6, 2018

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Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings