BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANTIOCH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016110548 ORDER DENYING MOTION FOR STAY PUT

On November 10, 2016, Student filed a motion for stay put supported by a declaration under penalty of perjury and authenticated exhibits. On November 17, 2016 District filed an opposition to the motion supported by a declaration and authenticated exhibits.

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 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's complaint asserts that District represented to Student's guardian at Student's October 9, 2015 IEP team meeting that Student would be "referred to Disabled Student Services at [Los Medanos Community College]." Her complaint alleges she was not accepted to the LMC program in August 2016 when she went to enroll. Student contends in this motion that she is entitled to stay put at the "LMC Transitions Program" based upon her

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

Guardian's suggestion during the October 9, 2015 IEP meeting that the program would constitute an appropriate placement for Student's transition.

Both parties attached copies of Student's last agreed upon and implemented IEP dated October 9, 2015. Although District's copy appears to be more complete, neither copy included the meeting notes nor has any reference to Guardian's purported request for transitional placement at LMC.[2]

The October 9, 2015 IEP is the operative IEP for purposes of defining Student's right to stay. The IEP specifically identifies as its "Offer of FAPE – Educational Setting" the Marchus School Special Education Center within the Contra Costa County Office of Education. Neither party disputes that Guardian signed the IEP or that District implemented its provisions.

Student offered no persuasive evidence that at any time after October 9, 2015 Guardian signed and District implemented any subsequent amendment IEP or other IEP that specifically identified Student's placement at "LMC Transitions Program" or any program at LMC. Accordingly, Student is not entitled to LMC Transitions Program as her stay put. Student's motion is denied.

IT IS SO ORDERED.

DATE: November 18, 2016

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Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

[2] District's supporting declaration purports to attach as Exhibit B the notes from the October 2015 IEP. However Exhibit B consists of notes from the September 2016 IEP and is therefore not informative, or relevant.