BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016051028 ORDER DENYING MOTION FOR STAY PUT

On June 28, 2016, Student filed a motion for stay put. On June 30, 2016, District filed an opposition to the motion. For the reasons discussed below, the motion is denied.

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 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 AND ORDER

Student seeks an order determining that her stay put placement should be at Summit View, a private school at which Parents unilaterally elected to place Student from and after January 2014. Student relies on a previous OAH decision issued on December 23, 2013, involving Student and District in *Student v. Santa Monica-Malibu Unified Sch. Dist.* (2013) Cal.Offc.Admin.Hrngs. Case Nos. 2013040629 and 2013051152. In that decision, the Administrative Law Judge found, in part, that District had denied Student a free appropriate public education, and, as an appropriate equitable remedy for District's past conduct, ordered tuition reimbursement for parental private placement at Summit View through the date of the

decision. The decision did not order that Student's appropriate prospective placement was a non-public school; it did not compel District to fund placement at Summit View beyond the date of the decision; and it did not determine that Summit View would be Student's stay put placement prospectively for any amount of time in the future.

Student asserts that following the issuance of the December 2013 OAH decision Student had no IEP placement, and therefore Student remained at Summit View at Parents' expense. In February 2014, District held an IEP meeting and made an offer of placement and services at a District public school, which Student alleges is the same offer at issue in the previous case. Parents did not consent to the IEP and from that time forward elected to continue to privately place Student at Summit View. Student filed her complaint in this case on May 16, 2016, asserting procedural and substantive violations of the IDEA from and after the February 2014 IEP offer.

In seeking stay put at Summit View, Student first argues that, based on the factual and legal findings by the ALJ in the December 2013 OAH decision, Summit View was an appropriate placement for Student. As a result, Student argues that Student's stay put placement should be Summit View, at District's expense. The argument is not persuasive. The ALJ's remedies ordered in that case were based upon findings of fact and conclusions of law before her at that time. Student has offered no authority or persuasive evidence that the 2013 OAH decision conclusively established Student's right to prospective stay put at Summit View. In fact, the opposite is true based on the plain language of the Order, as discussed above.

Student next argues that District should fund Summit View as Student's stay put because District did not file for due process after Parents declined its February 2014 FAPE offer, thereby leaving Parents no choice but to continue to fund a private placement. The argument is not persuasive, in part because Student could have also filed a due process complaint at anytime within two years after that IEP, and chose not to do so. Whether District denied Student a FAPE by failing to file on its offer of FAPE is a matter to be decided by the hearing officer in this case, not in a motion for stay put.

Student also relies *Winkelman v. Parma City School District Board of Education* (N.D. Ohio October 24, 2008) 51 IDELR 126, which found that, where a hearing review officer ordered reimbursement for private placement for one school year without ordering a prospective placement during pendency of a dispute for the following year, the school district was obligated to continue paying for the private placement until the dispute was resolved. Student's reliance on *Winkelman* is not persuasive because the decision is not binding on OAH, and the facts are not directly on point with this case.

District's opposition is persuasive. First, neither party disputes that, as of the time this motion was filed, Student did not have an IEP that was mutually agreed upon and implemented by District at any time after December 2013. Neither party offered an IEP that they contend was the last agreed upon and implemented IEP. Parents voluntarily elected to privately place Student at Summit View for the years 2014 and after because they did not

agree to the February 2014 IEP offer. (See *D.L. v. Shoreline Unified Sch. Dist.* (N.D. Cal. September 30, 2010, No. C 09-04753 SBA.) 2010 WL 3893629, **7-8.) Whether or not Parents are entitled to reimbursement for any or all of their expenses prior to filing their complaint in this matter is an issue that requires findings of fact by the hearing officer in this case.

Student has established no legal basis for finding that Summit View is Student's stay put placement pending the outcome of this matter. Student's motion is denied. All dates in this matter are confirmed.

IT IS SO ORDERED.

DATE: July 07, 2016

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