BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FREMONT UNION HIGH SCHOOL DISTRICT, SANTA CRUZ COUNTY OFFICE OF EDUCATION, AND SANTA CRUZ CITY SCHOOLS.	OAH Case No. 2018110925 ORDER TO SUBMIT FURTHER BRIEFS REGARDING MOTION FOR STAY PUT

On November 28, 2018, Student filed a request for due process, naming Fremont Union High School District, Santa Cruz County Office of Education, and Santa Cruz City Schools. Student filed a motion for stay put with his complaint. Santa Cruz County Office of Education filed an opposition to the motion for stay put on December 3, 2018, and a response to Student's complaint on December 11, 2018. No other party responded to the motion for stay put.

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.)

DISCUSSION

The complaint, motion for stay put, opposition and response generally agree upon the facts related to Student's placement and disputed issues. Student's Parents live within the boundaries of Fremont Union High School District, which had been the local educational agency responsible for providing Student with a free appropriate public education. In 2017, the San Andreas Regional Center placed Student at a licensed children's institution named "TIDES," which was located in Santa Cruz.

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

Pursuant to various California educational codes, North Santa Cruz Special Education Local Plan Area became responsible for providing Student with a FAPE while he was residing in a licensed children's institution within the local plan's area. Further, the North Santa Cruz local plan has a policy that the Santa Cruz County Office of Education would serve such a student, if the student required a nonpublic school placement. Student's individualized education plan placed Student in a nonpublic school and, therefore, the Office of Education became Student's local education agency responsible for providing Student with a FAPE. The Office of Education held a January 2018 IEP meeting and provided Student a placement at Bay School, a nonpublic school. Parents agreed to the IEP. The January 2018 IEP is the most recent implemented IEP.

In November 2018, TIDES ceased operations as a licensed children's institution. However, the Regional Center continued to maintain Student's residence at the same address in Santa Cruz. The Office of Education contended that it was no longer the local education responsible for providing Student with a FAPE, indicating that Fremont Union was responsible because Parents continued to reside within its boundaries. Later in November 2018, Bay School indicated that Student could not attend because the Office of Education would not continue to fund the nonpublic school placement.

Though the complaint's issues and the motion for stay put concern that same facts, the analysis differs. The complaint seeks a determination of the local education agency responsible for providing Student with a FAPE and, therefore, obligated to fund the nonpublic school placement. The motion seeks an order of stay put, directing the Office of Education to fund Bay School pursuant to the last agreed upon and implemented IEP, until the due process proceeding is complete.

Devon Wood, the Senior Director of Special Education for the Santa Cruz County Office of Education, provided a declaration under penalty of perjury in opposition to the motion. Mr. Wood stated that he learned Fremont Union would fund Student's placement in a November 30, 2018 email from Fremont Union High School District's Director of Educational and Special Services, Nancy Sullivan.

An order for stay put is generally not required unless a dispute exists. Here, Mr. Wood's sworn testimony indicates that a dispute regarding funding – at least for purposes of the stay put motion – does not exist. Fremont Union allegedly will fund Student's nonpublic school. However, Fremont Union did not file a response to the complaint or the stay put motion. The evidence is unclear as to whether a dispute exits regarding funding of Student's placement during the pendency of the due process proceeding. Therefore, the parties are directed to clarify the status of Student's placement and nonpublic school funding during the pendency of the due process proceeding.

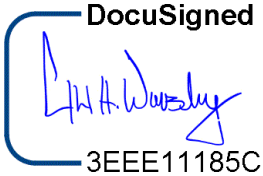
ORDER

1. Within five business days of the date of this order, Fremont Union High School District will file a response to Student's motion for stay put, indicating whether it is funding Student's nonpublic school placement during the pendency of the due process proceeding.

2. Within five business days of the date of this order, Student will file a response to Santa Cruz County Office of Education's opposition to the stay put motion, indicating the present status of Student's placement and funding of the nonpublic school.

DATE: December 14, 2018

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings