BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ALHAMBRA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025070041

ORDER DENYING MOTION FOR STAY PUT

AUGUST 19, 2025

On August 11, 2025, Student filed a motion for stay put with the Office of Administrative Hearings, called OAH. On August 14, 025, Alhambra Unified School District filed an opposition. Thereafter, Student filed a reply to the opposition on August 14, 2025, and on August 15, 2025, a further reply to the opposition in the form of an email sent to Alhambra.

Until due process hearing procedures are complete, special education students are entitled to remain in their 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. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) ("*Thomas*")

In California, a "specific educational placement" is defined as the "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).)

Student contends the applicable stay put placement should not be what was specified in the last agreed-upon and implemented IEP because that placement is not safe for Student due to medical and safety concerns. Following an incident with a school bus driver on June 4, 2025, Student was removed from Garfield Elementary and unilaterally placed by Parent in Kidz Kingdom Academy, a private school. Student argues that Kidz Kingdom Academy is Student's stay put placement because it was Student's placement "actually functioning when the dispute [arose]," citing *Thomas*.

Alhambra counters that Kidz Kingdom Academy was never proposed, discussed, or agreed to at any IEP team meeting held for Student. The IEP team agreed to place Student in a special day class at Garfield Elementary School in a meeting held on April 22, 2025. Parent agreed to the placement by signing the IEP on April 23, 2025. Thereafter, Student attended Garfield Elementary and received IEP services there until removed by Parent in June 2025. Accordingly, Alhambra concludes, Garfield Elementary, and not Kidz Kingdom Academy, is Student's stay put placement.

Student included medical documentation and application information with the motion, but did not include a copy of the last agreed-upon IEP. Student has not argued, in either the motion or reply, that Garfield Elementary is not the last agreed-upon IEP placement or that the Garfield Elementary placement was not implemented. Student's

argument rests on the contention that Kidz Kingdom Academy is his "current educational placement."

Thomas concerned a dispute over a placement that was revised by the educational agency months after being determined at an IEP team meeting. The placement as proposed by the team was never implemented, so neither the agreed-upon or revised placement was ever implemented. "In such a situation, 'placement' does not refer to an unimplemented IEP." (*Thomas*, *supra*, 918 F.2d at p. 625.) Since stay put is intended to preserve the status quo during a dispute, the operative placement under which the child is receiving instruction at the time the dispute arises will be considered stay put. (*Thomas*, *supra*, 918 F.2d at p. 626.) In *Thomas*, neither the original IEP placement, which required in-person attendance for a medically fragile student, nor the revised placement, of one hour of in-home instruction per week, was found to be stay put. Instead, Student was maintained on a program of one hour of instruction per day which had been put in place due to "a change in state funding regulations" and kept in place while revisions to Student's IEP were being considered. (*Thomas*, *supra*, 918 F.2d at p. 622.)

Student asserts that Parent's unilateral placement at Kidz Kingdom Academy was the operative placement at the time the dispute arose and thus *Thomas* mandates that Student must be maintained there as stay put. That assertion necessarily requires accepting that Student was removed from school and unilaterally placed before any dispute arose. There is no showing that this was the case. In any event, that aspect of *Thomas* has been found obsolete by the federal circuit court that issued the decision.

N.W. v. Boone County Board of Education, (6th Cir. 2014) 763 F.3d 611 (*N.W.*), recognized that the United States Department of Education created a definition of placement in its regulations after *Thomas* was issued. As defined, a placement decision

must be made by an IEP team and the placement must be based upon the child's IEP. (34 C.F.R. § 300.116(a)(1) and (b)(2)). The Court noted "[t]hese definitions indicate that the school district must, in some fashion, approve of the placement decision and that the parents cannot unilaterally decide upon which school will serve as the child's 'placement.' " (*N.W.*, *supra*, 763 F.3d at 617.) That is precisely what Student proposed to do here. Because Alhambra never agreed to place Student there, Kidz Kingdom Academy is not Student's stay put placement.

California law aligns with the decision in *N.W.* The requirement that stay put be based upon an IEP placement has been codified in the state's regulations. (Cal. Code Regs., tit. 5, § 3042, subd. (a).) Parent's contentions that the IEP's placement at Garfield Elementary is inappropriate and unsafe is a matter to be resolved at hearing and is not appropriately resolved through the stay put process. Nothing presented by Student supports a finding that Kidz Kingdom Academy is his stay put placement.

ORDER

Student's request for a stay put placement at Kidz Kingdom Academy is denied.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings