BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>DAVIS JOINT UNIFIED SCHOOL DISTRICT AND WINTERS JOINT UNIFIED SCHOOL DISTRICT. | OAH Case No. 2015080259<br><br>AMENDED ORDER DENYING MOTION FOR STAY PUT |

On September 1, 2015, Student filed a request for "Pendency Placement," requesting that Davis Joint Unified School District, fund Student's Orton-Gillingham tutoring and private school tuition pending determination of his due process request. Parent's request constitutes a request for stay put[1]. On September 4, 2015, Davis filed an opposition on the grounds that Student is unilaterally privately placed; no individualized education program has been implemented on Student's behalf; and Davis is not Student's local education agency responsible for providing him with an individualized education program. On September 4, 2015, Winters Joint Unified School District filed an opposition to Student's request, also alleging that Student was privately placed and had not accepted special education placement and services from Winters. Consequently there was no stay put placement available to Student.

## APPLICABLE LAW AND DISCUSSION

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 IEP, which has been implemented prior to the dispute arising.

[1] Student is represented, pro se, by Parent who filed a Request for Pendency Placement. This is a request for Stay Put, as Parent is requesting that Davis maintain Student's current placement until determination of this due process request. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).)

(*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.)

In its entirety, Parent's stay put requests states, "I wish to request PENDENCY PLACEMENT for Student for Orton-Gillingham tutoring and private school tuition. District of residence is Winters Joint Unified School District." In reviewing Student's amended complaint, Parent alleges Student attends St. James School, a private school within the boundaries of the Davis Joint Unified School District. Parent consented to an Individualized Service Program or "ISP" provided by Davis by virtue of Student's unilateral private placement within that school district. Parent has not alleged consent or implementation of any individualized education program for Student from any school district.

Student's request for pendency placement is insufficient to suggest he is entitled to a stay put placement. Based upon his complaint, Student has only received ISP services from Davis. Student has not alleged placement and services pursuant to an individualized education program from any school district. Student does not allege that any individualized education program has ever been implemented on behalf of Student. There is no factual basis to suggest Student previously received special education and related services pursuant to an individualized education program. Therefore, Student's request for stay put must be denied.

ORDER

Student's request for pendency placement, also known as stay put is denied.

DATE: September 11, 2015

**/s/**

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings