BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

| | |
|---|---|
| In the Matter of: | |
| PARENT ON BEHALF OF STUDENT, | OAH CASE NO. 2014090150 |
| v. | ORDER REQUESTING ADDITIONAL EVIDENCE IN SUPPORT OF MOTION FOR STAY PUT |
| POMONA UNIFIED SCHOOL DISTRICT. | |

On September 4, 2014, Student's advocate on Parent's behalf of filed a motion for stay put. The motion was not supported by any authenticated evidence, including a declaration establishing the facts asserted in the motion or a copy of Student's last agreed upon individualized education program. On September 8, 2014, District filed a statement of non-opposition to the motion, but also failed to offer any evidence as to what District contended the terms of Student's stay put were.

## 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 (IEP), 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.)

## DISCUSSION AND ORDER

Student's complaint raises the issue of whether Student is a resident of District entitling him to special education services and supports from District, and whether he is entitled to transportation with a 1:1 aide. The complaint alleges that when Student came to District in 2012, District held an individualized education program at the beginning of the 2012-2013 school year, and offered services and placement, the details of which the

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

complaint does not specify. Student further alleges that District refused to provide him with a 1:1 aide with transportation services, which he allegedly had in his previous IEP from El Monte School District. Student does not specify in the complaint whether Student's parent signed and agreed to the initial IEP. Student turned 18 years old in April 2013, and District continued to serve him through the 2013-2014 school year, although the complaint does not specify what IEP was in force during that school year. Student alleges that District now contends that he is not a resident of the District.

Student's motion asserts that his placement at the time his complaint was filed is District's Adult Transition Program. Student also raises an issue of whether he should be entitled to transportation with a 1:1 aide. Although District has stated in a letter signed by its Director of Special Education that it does not object to Student's request for an order to enforce his stay put, neither party offered any evidence in connection with this motion as to what was Student's last agreed upon and implemented IEP, or what services and supports were agreed upon and implemented, thus establishing the basis for stay put.

Accordingly, the parties are ordered to file with OAH within three business days of this Order an authenticated copy of what they contend is the Student's last agreed upon and implemented IEP. If OAH does not receive the evidence by the close of business on the third business day, the motion will be denied without prejudice to Student's right to re-file the motion with the appropriate evidentiary support.

IT IS SO ORDERED.

DATE: September 08, 2014

**/s/**

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings