BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN LEANDRO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019020682 ORDER DENYING MOTION FOR STAY PUT

On February 19, 2019, Student filed a request for due process hearing and a motion for stay put. On February 22, 2019, the San Leandro Unified School District filed an opposition, and on February 26, 2019, Student filed a reply.

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.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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).)

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

DISCUSSION

From the pleadings, it appears that the parties agree on the following facts: Student is six years old and in kindergarten. She was first made eligible for special education and related services at an initial individualized education program team meeting on September 28, 2018. That IEP placed Student at the San Leandro's McKinley Elementary School. Parent agreed to the IEP.

Student had serious behavioral difficulties at McKinley. At an addendum IEP team meeting on November 15, 2018, San Leandro offered to place Student at the Maya Angelou Academy in Oakland, a non-public school, with transportation. Mother did not sign her agreement to the IEP on the document, but she filled out the necessary enrollment forms for Maya Angelou, and Student began attending Maya Angelou on November 16, 2018. She was transported there and back by San Leandro.

Maya Angelou staff became uncomfortable serving Student without a signed IEP document placing her there, and at another IEP team meeting on January 16, 2019, San Leandro attempted to persuade Parent to sign the November 2018 IEP but she would not. That day, Parent withdrew Student from Maya Angelou, and Student has been at home ever since.

The parties dispute the remaining pertinent facts. In a declaration attached to the stay put motion, Parent states that she told San Leandro staff at the November 2018 IEP team meeting she did not want to send Student to Maya Angelou, which she had previously visited. She asked what would happen if she declined the offer, and, according to her declaration, San Leandro staff told her that San Leandro would "go to court" to get an order placing Student at Maya Angelou. In the meantime, Parent states, she was told that the only option was home instruction while San Leandro searched for another non-public school, which would likely be in a different county.

In her declaration, Parent states that she placed Student at Maya Angelou after the November 2018 IEP team meeting, but states she only did so because 1) due to an injury she could not take care of Student at home; 3) she had not spoken to an attorney and did not understand she did not have to send Student to Maya Angelou; and 3) she "felt like [she] had no choice" except to send Student there or accept a home program. Student argues that these facts amount to coercion; that Parent was coerced into placing Student at Maya Angelou; and because she was coerced and did not sign the IEP, she did not give informed consent to the placement. It is therefore not the stay put placement, Student concludes, because it was never agreed upon.

San Leandro denies that Parent was coerced into enrolling Student at Maya Angelou. It states that it did explain to Parent that it would or might file a request for due process hearing to obtain an order placing Student there. But it argues that by her conduct Parent agreed to the Maya Angelou placement since she filled out the enrollment forms, accepted San Leandro's transportation, and sent Student there from November 16, 2018, until her

withdrawal on January 16, 2019. It concludes that Maya Angelou is therefore the last agreed-upon and implemented placement and is the stay put placement.

It is Student's burden, as the moving party, to show that her motion has merit. Student offers no authority for her claim that because her placement was coerced it cannot be the stay put placement. Her claim that coercion is equivalent to a lack of informed consent is also made without authority, and is not logical. It is quite possible that someone could fully understand her factual situation and still be coerced. Parent had visited Maya Angelou before the November 2018 IEP team meeting, and does not claim that she lacked information about the school.

Whether Parent was coerced into placing her daughter at Maya Angelou, or whether she effectively consented to the placement by her conduct, is a complicated factual issue that can only be resolved at the upcoming due process hearing, which is scheduled to begin on May 14, 2019. There are also disputed factual issues surrounding what Parent was told at the IEP team meetings. Whether Parent understood her rights is not clear; she declares she did not, but the IEP documents state that she was repeatedly advised of her procedural safeguards.

San Leandro may have advised parent that it would "go to court" to obtain an order placing Student at Maya Angelou. That may have been a reference to the possibility of filing a request for due process hearing. Such a statement, by itself, can hardly be regarded as coercion. A school district is invited, and sometimes required, to seek such an order by the Individuals with Disabilities Education Act and related laws. (See, e.g., *I.R. v. Los Angeles Unified Sch. Dist.* (9th Cir. 2015) 805 F.3d 1164, 1168-1169.)

There are also legal issues not addressed here. The parties do not describe what kind of conduct constitutes consent, though an IEP is unsigned. And it is possible that the original placement at McKinley could not be the stay put placement because it was only intended to be temporary. The September 2018 IEP document placed Student on a limited schedule of three hours a day pending assessments, and clearly contemplated reconsidering her placement once those assessments were finished.

Finally, the purpose of the stay put rule would not be served by returning Student to McKinley. "The stay put provision acts as a powerful protective measure to prevent disruption of the child's education throughout the dispute process." (*Joshua A. v. Rocklin Unified Sch. Dist.* (9th Cir. 2009) 559 F.2d 1036, 1040.) Student was attending Maya Angelou when this dispute arose, and still would have been there on the day the request for due process was filed (Feb. 19, 2019) if Parent had not unilaterally withdrawn her from school. Regarding Maya Angelou as the stay put placement minimizes the disruption of Student's education; returning her to McKinley would be far more disruptive. On these facts, Maya Angelou is Student's stay put placement.

If Parent can prove her factual claims at hearing, she may have established at least one violation of the IDEA, such as predetermination of an IEP offer. But that depends on

factual development at hearing. On this record, Student's assertion that McKinley is the last agreed-upon and implemented placement is unpersuasive.

For the above reasons, Student's motion for a stay put order is DENIED.

Date: March 13, 2019

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Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings