BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MT. DIABLO UNIFIED SCHOOL DISTRICT AND CONTRA COSTA COUNTY OFFICE OF EDUCATION.	OAH Case No. 2019030484 ORDER GRANTING MOTION FOR STAY PUT

On March 22, 2019, Student filed a motion for stay put. On March 25, 2019 Mt. Diablo filed an opposition on the ground that Mt. Diablo was not Student's local educational agency.

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.)

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).)

DISCUSSION

Student's complaint, among other things, that as of February 22, 2019, Mt. Diablo disenrolled Student and failed to implement his IEP. Part of Mt. Diablo's response and an

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

affirmative defense to this allegation, is Student does not reside within the jurisdictional boundaries of Mt. Diablo and Mt. Diablo is not Student's local educational agency, which negates any responsibility for Student's special education placement and related services.

Until disenrolled by Mt. Diablo on February 22, 2019, Student attended the counseling and education program at Floyd I. Marcus School, operated by Contra Costa County Office of Education. Student's placement at Marcus School prior to February 22, 2019, was pursuant to his March 27, 2018 IEP developed by Mt. Diablo. Student, currently in the seventh grade, has attended Marcus school since kindergarten. Once disenrolled by Mt. Diablo, Student has not attended school since February 22, 2019.

There is no disagreement that the Mt. Diablo IEP, dated March 27, 2018, was Student's last agreed upon and implemented IEP. County Office of Education did not file a response to Student's request for Stay Put. In a separate Motion to Dismiss, however, County Office of Education indicated that, although it is not Student's local educational agency, it provides special education placement and related services requested and developed by local educational agencies within Contra Costa County. County Office of Education remains willing to provide Student's special education placement and related services pursuant to the March 27, 2018 IEP developed by Mt. Diablo.

Mt. Diablo's opposition to Student's stay put is based upon an assumption that a granting of stay put is tantamount to a summary judgment on the issue of Student's residency. To the contrary, Student is requesting to remain in the educational placement at Marcus School, which he has attended since kindergarten, under the terms of the March 27, 2018 IEP which was in existence prior to the dispute arising. To deny Student's stay put request on the basis of Mt. Diablo's contention that Student no longer resides within the jurisdictional boundaries of Mt. Diablo, would constitute a prehearing determination or summary judgment of an issue reserved for the due process hearing.

Student's last agreed upon special education placement and services was contained in the March 27, 2018 IEP developed by Mt. Diablo. Mt. Diablo provided Student educational placement at the Floyd I. Marcus School, operated by Contra Costa County Office of Education. This educational placement and special education services constitutes stay put for Student. Contra Costa County Office of Education remains willing to provide Student placement at the Marcus School, and implement the March 27, 2019 IEP pursuant to contract with Mt. Diablo.

ORDER

Student's request for Stay Put is granted. Student shall immediately be readmitted to Floyd I. Marcus School, pursuant to the March 27, 2018 IEP. Pending completion of due process procedures related to Student's complaint, Mt Diablo Unified School District is

ordered to reinstate its contract with Contra Costa County Office of Education to comply with Student's stay put pursuant to the March 27, 2018 IEP.

IT IS SO ORDERED.

DATE: March 28, 2019

DocuSigned by:
Judith Pasewark
D4B56EDF1903485...

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings