BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT

V.

FONTANA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024100221

ORDER GRANTING MOTION FOR STAY PUT

JANUARY 3, 2025

On October 4, 2024, Student filed a Request for Due Process with the Office of Administrative Hearing, called OAH, naming Fontana Unified School District as respondent. On December 20, 2024, Student filed a motion for stay put. On December 26, 2024, Fontana Unified filed an opposition to Student's motion to stay put. On December 30, 2024, Student filed a reply to Fontana Unified's opposition.

On December 31, 2024, OAH issued an Order to Produce Supplemental Evidence, directing Student to produce a complete copy of Student's last agreed upon and implemented IEP, by January 12, 2025. Student's attachments to the motion for stay put, and the declarations of Student's counsel and Parent, did not clearly establish Student's last agreed upon and implement IEP.

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); 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.)

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).)

On December 31, 2024, OAH issued an Order to Produce Supplemental Evidence, directing Student to produce a complete copy of Student's last agreed upon and implemented IEP, by January 12, 2025. Student's attachments to the motion for stay put, and the declarations of Student's counsel and Parent, did not clearly establish Student's last agreed upon and implement IEP.

On December 31, 2024, Student filed Supplemental Evidence in support of the stay put motion with attachments demonstrating that on August 26, 2024, Parent signed and consented to implementation of Student's May 21, 2024 IEP, in its entirety. Though Parent did not agree that the May 21, 2024 IEP provided Student with a FAPE, the May 21, 2024 IEP is Student's last, agreed-upon and implemented IEP with Fontana Unified.

DISCUSSION

Student attended Fontana Unified pursuant to an interdistrict permit, beginning in the 2022-2023 school year. Student asserts that Fontana Unified improperly revoked Student's interdistrict permit after the filing of his complaint, essentially changing Student's placement. Student's stay put motion includes a declaration from Student's attorney, who verifies two attachments – the Student's most recent IEP documents and the December 19, 2024 letter from the principal of Kathy Binks Elementary School. The letter notified Student that Fontana Unified was revoking Student's interdistrict transfer permit, due to Student's excessive tardies and absences. Student asserts that Fontana revoked the permit in retaliation for Student's October 2024 due process filing.

Fontana Unified asserts in its opposition that OAH does not have jurisdiction to determine the appropriateness of Fontana Unified's permit revocation. Fontana Unified then includes a declaration from Binks Elementary School's principal, providing details of communications and attendance records, which allegedly establish that the permit was properly revoked, due to Student's excessive absences and tardies. Student's reply to Fontana Unified's opposition includes a declaration of Parent, asserting a timetable and facts, contrary to that contained in the principal's declaration regarding the absences and tardies.

Here, the question is what was the last agreed upon and implemented IEP placement prior to the dispute arising, not whether the interdistrict permit was properly revoked. OAH has previously granted stay put, though the placement was initially procured by interdistrict transfer, and the district subsequently revoked the permit. OAH decisions are not binding precedent but may be persuasive authority. (Cal. Code Regs., tit. 5, § 3085.) These orders are persuasive.

Other administrative rulings have found that stay put can be ordered even if the placement was initially procured through an interdistrict transfer. (*Snohomish Sch. Dist.* 106 LRP 12019 (Was. SEA Oct. 24, 2005) (ordering school district to assist in the enrollment process at another school through the interdistrict transfer process as part of stay put); *Great Meadows Regional Bd. of Educ.* 47 IDELR 274 (NJ SEA Oct. 12, 2006) (ordering maintenance of stay put despite expiration of the interdistrict transfer); *Monrovia Unified Sch. Dist.* 102 LRP 10082 (Cal. SEA Aug. 30, 2001) (ordering maintenance of stay put despite expiration of the interdistrict transfer).) These authorities are also persuasive.

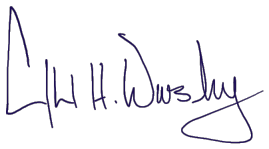
In the case of *R.B. ex rel. Parent v. Mastery Charter School* (E.D. Penn 2010) 762 F.Supp.2d 745, the school district unilaterally disenrolled student due to excessive absenteeism. Thereafter, parent filed a complaint seeking stay put. The court in *Mastery* ruled that the school district's unilateral disenrollment constituted a change in placement. Further, the court reasoned, that allowing school districts to end services to a special education student in such a manner would eviscerate the protections of the IDEA. The court granted stay put in student's prior charter school placement. The facts of *Mastery* are strikingly similar to this matter.

The unequivocal language of title 20 United States Code section 1415(j) guarantees that a student remains in his or her then current placement during the pendency of a dispute. (*Honig v. Doe* (1988) 484 U.S. 305, 329 [108 S.Ct. 592, 98 L.Ed.2d 686].) The purpose of stay put is to prevent school districts from denying placement to a student while the parties are litigating. (*Id.* at p. 426.) OAH has jurisdiction to hear disputes concerning placement of students with special needs; accordingly, OAH has jurisdiction to determine stay put.

Here, Fontana may not unilaterally alter Student's last agreed upon and implemented placement. Fontana's argument that a separate basis to remove Student from his current placement based upon the interdistrict transfer permit is not persuasive. Fontana did not provide authority that terms of the interdistrict transfer permit trump the stay put protections provided to Student pursuant to the IDEA. As a result, Student's request to continue attending his current placement at Fontana Unified is granted while this due process matter is pending.

ORDER

Student motion for stay put is granted.



Clifford H. Woosley
Administrative Law Judge
Office of Administrative Hearings