BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ANTIOCH UNIFIED SCHOOL DISTRICT AND

ALAMEDA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023020865

# ORDER GRANTING MOTION FOR STAY PUT

APRIL 17, 2023

On March 16, 2023, Student filed a motion for stay put with the Office of Administrative Hearings, called OAH. On April 7, 2023, OAH issued an Order Requiring Supplemental Evidence ordering Student to file with OAH a copy of the last agreed upon and implemented IEP by April 13, 2023.

On April 10, 2023, Student's counsel filed a declaration regarding amended proof of service for the stay put motion stating Student's counsel had erroneously failed to serve the motion upon respondents, Antioch Unified School District or Alameda Unified School District. On April 12, 2023, Alameda filed a non-opposition.

On April 13, 2023, Antioch filed an opposition to Student's motion for stay put. Antioch asserted that it had not been served with the stay put motion until April 10, 2023. Antioch contended that it did not dispute that Student is entitled to remain at his current educational setting as set forth in his last agreed upon and implemented. However, Antioch argued that the stay put Order should merely determine that Student is entitled to remain at his current educational placement pending the completion of due process hearing and the Order should not address the issue of which local educational agency is responsible for providing a free appropriate public education, called FAPE, because that determination requires an evidentiary hearing.

On April 13, 2023, Student filed a reply to Antioch's response complaining that Antioch's motion describing Student's motivations for filing the motion should be disregarded as irrelevant. Student also argues that no putative consequences should attach to Student's motion based on Student's failure to serve the motion on respondents prior to April 10. Student's failure to serve respondents when the motion was filed with OAH is not being considered in the determination of this motion.

## 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.)

## DISCUSSION

Student is 14 years old, eligible for special education, and is attending A Better Change School, called ABC School, located within the boundaries of Antioch. Student's Parent resides within the boundaries of Alameda. Student contends he resides in a group home within the boundaries of Antioch. It is uncontested that Antioch has provided Student special education services since July 2021, when Student began residing at the group home.

On February 18, 2023, Parent provided consent to the IEP amendment dated February 1, 2023, which amended Student's IEP dated December 12, 2022. Student's operable IEP lists Antioch as the district of service and ABC School as the school of attendance. On February 22, 2023, Antioch sent a prior written notice to Parent recommending Parent contact Alameda regarding the provision of special education and services because it claimed that Alameda was the local educational agency responsible for Student's education. Student requests a stay put order that finds Antioch is the local educational agency responsible for providing Student's entire special education, supports, services, and placement and order for Antioch to continue to implement them while this matter is pending.

Antioch contends that Student lives in the group home within its boundaries on the weekdays and Student returns to live with Parent on the weekends within Alameda's boundaries. Antioch asserts that Parent voluntarily placed Student in the group home in 2021. Antioch argues that Alameda is the local educational agency responsible for Student's special education based on Parent's residency. Antioch argues that it is not responsible for Student's special education because Student was not placed in a group home by a court, regional center, or other entity that is not an educational entity. Antioch further argues that the issue of which local educational agency is responsible

for providing Student a FAPE during the time period at issue is an allegation in Student's complaint and is entitled to a due process hearing. These are factual assertions that must be determined following an evidentiary hearing.

Student established that his stay put placement is a nonpublic school with the services and supports stated in the December 12, 2022 IEP, as amended on February 1, 2023. It is uncontested that Student is currently attending ABC School and Antioch has been the local educational agency providing special education and related services pursuant to Student's IEP since 2021. Student established that the last implemented IEP is December 12, 2022, as amended February 1, 2023, for which Parent provided consent on February 18, 2023. As a result, for the purposes of stay put, Antioch must continue to implement Student's placement at ABC School, while this matter is pending. This Order does not determine which local educational agency is responsible for providing FAPE to Student during the time period at issue in Student's complaint.

Antioch cited *Irvine Unified School District* (CA SEA 2009) 109 LRP 77659, which stated that OAH issued a stay put Order that determined Student's placement, but declined to decide which public agency was responsible for funding Student's placement. OAH orders and decisions are not binding precedent. (Cal. Code Regs., tit. 5, § 3085.) The Decision in *Irvine* does not explain why OAH refrained from deciding which public agency was responsible for Student's placement for the purpose of stay put. However, the facts in *Irvine* are distinguishable from this matter. In *Irvine*, OAH determined that Irvine was the local educational agency responsible for providing Student a FAPE, but Irvine had never been invited to attend an IEP team meeting or develop the IEP that recommended placement at a residential treatment facility out of state. However, here, Antioch developed Student's IEP and has been implementing it, including placement at the nonpublic school located within its boundaries. As a result,

Antioch's contention that *Irvine* is applicable and OAH should refrain from stating the local educational agency responsible for implementing Student's IEP in the stay put Order is not persuasive. Nothing in this order prevents the parties from making the same or similar arguments at the due process hearing.

## ORDER

Student's request for stay put is granted. Antioch Unified School District shall continue to implement the last agreed upon and implemented IEP of December 12, 2022, as amended February 1, 2023, including Student's placement at ABC School, while this matter is pending.

## IT IS SO ORDERED.

*Marlo Nisperos*

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings