BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CARLSBAD UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016110599 ORDER DENYING STUDENT'S MOTION TO MODIFY STAY PUT; AND DENYING STUDENT'S REQUEST TO CONSIDER NEW DOCUMENTARY EVIDENCE

On March 24, 2017, Student filed a Motion to Modify Stay Put. On March 27, 2017 Student filed an invoice from his former attorney with OAH. The attorney invoice shall be deemed Student's request to consider the invoice as new documentary evidence. On March 29, 2017, District opposed both motions.

APPLICABLE LAW

Stay Put Modification

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 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 is entitled to remain in his last agreed upon and implemented placement while a dispute is pending and an order for stay put is generally not required unless a dispute over placement exists. Here, Student and District did not dispute that the last agreed upon placement was a non-public school. Student requested that OAH modify the last agreed

upon placement from a non-public school, and change it to another placement, a District school. This request is not governed under the principles of stay put. The placement change requested by Student in this motion would require agreement by District, or a determination by Student's individualized education program team.

The Motion to Modify Stay Put is denied.

New Documentary Evidence

Education Code Section 56505, subdivision (e)(7), provides the right of the parties to receive exhibits at least five business days prior to the hearing from other parties to the hearing. (Ed. Code, § 56505 subd. (e)(7).)

The attorney invoice was not submitted until March 27, 2017, two weeks after the last hearing day, March 13, 2017. On the last hearing day, the Administrative Law Judge admitted the documentary evidence requested by the parties and allowed the record to remain open only for the parties to file written closing arguments by March 27, 2017. Because the attorney invoice was presented for the first time well after the close of the record for submission of evidence, it is untimely.

The request to consider the attorney invoice as new documentary evidence is denied.

ORDER

1. Student's Motion to Modify Stay Put is denied.

2. Student's request to consider the attorney invoice as new documentary evidence is denied.

DATE: April 5, 2017

DocuSigned by:
Sabrina Kong
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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings