BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SAN MARCOS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018080080 ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR STAY PUT

On August 9, 2018, Student filed a motion for stay put. On August 14, 2018, San Marcos Unified School District filed a statement of non-opposition to the 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 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 states that his stay put program is the one defined by his December 5, 2017 IEP, as amended by his March 15, 2018 IEP. He states that San Marcos proposed in subsequent IEP team meetings to change his program from a mild moderate special day class to a moderate severe special day class. Student opposes the proposed change, has not agreed to it, and does not believe it would offer him a free appropriate public education.

In its statement of non-opposition to Student's motion, San Marcos agrees with Student's designation of his stay put, and states that it will implement it. However, San Marcos did not provide a declaration in support of its non-opposition.

Student is entitled to remain in his last agreed upon and implemented placement while a dispute is pending. Student's motion for stay put is granted in part. Student's stay put placement is the mild to moderate BASE program detailed in Student's December 5, 2017 IEP, as amended by his March 15, 2018 IEP, consisting of the following:

1) Specialized academic instruction for 745 minutes a week in the BASE program;

2) Specialized academic instruction for 195 minutes a week in a general education classroom;

3) Individual language and speech services for 1000 minutes a year;

4) Group language and speech services for 350 minutes a year; and

5) Group occupational therapy services for 450 minutes a year.

However, the IEP Student attached as an exhibit does not identify the name of the school at which Student's program is to be implemented. The location of a program is generally at the discretion of a school district and does not define stay put. (See, e.g., *Rachel H.* v. *Dept. of Ed., State of Hawaii* (9th Cir. 2017) 868 F.3d 1085, 1089-1093.) Therefore, Student's motion for stay put specifically at Double Peak K8 School is denied.

ORDER

Student's motion for stay put is granted in part. Student's stay put shall be the program and services identified in his December 5, 2017 IEP, as amended by his March 15, 2018 IEP.

DATE: August 16, 2018

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings