BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023040484

ORDER DENYING MOTION FOR STAY PUT

APRIL 26, 2023

On April 13, 2023, Student filed a motion for stay put, requesting placement at Fusion Academy - Berkeley. On April 18, 2023, Oakland Unified School District filed an opposition, arguing that Fusion Academy – Berkeley is not Student's stay put placement. On April 21, 2023, Student filed a reply brief in support of his motion for stay put. Oakland responded with a reply on April 24, 2023, and Student submitted an opposition to Oakland's reply.

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).)

Oakland convened an IEP team meeting for Student on August 31, 2022. At the time of this meeting, Student attended Fusion Academy - Berkeley. On the IEP document, the team noted Fusion as Student's school of attendance with a comment "[Student] is currently enrolled by parent at a private school." The IEP team agreed Student was eligible for special education and related services under the categories of specific learning disability and other health impairment. Oakland offered Student:

- 300 minutes per week of group specialized academic instruction in a separate classroom in a public integrated facility, through a study skills class;
- 300 minutes of push-in specialized academic instruction in general education classes of mathematics, English, and science, within a regular classroom in a public day school;
- 60 minutes per week of individual, educationally related mental health services counseling in a separate classroom in a public integrated facility; and
- 90 minutes per week of group counseling and guidance in a separate classroom in a public integrated facility, provided by a nonpublic agency.

At the August 31, 2022, IEP team meeting, the team discussed that Student was receiving one-on-one instruction at Fusion. Oakland offered Student placement in an inclusive counseling enriched program at a small school, which was available at Life Academy. Student's advocate asked detailed questions about Life Academy and expressed concern that Student would be going from a one-on-one setting to a larger setting, which she believed would be detrimental to him. Parent agreed to tour Life Academy. On August 31, 2022, Barbara Kass, Special Education Private School Manager for Oakland, copied Parent on an email which stated "A tri IEP was held and the offer of FAPE is the CE inclusion at Life Academy. Please set up a tour with [Parent] so she is able to see the program and ask questions." Parent toured Life Academy on September 7, 2022. On September 30, 2022, Parent signed her consent to all parts of the IEP.

Student's argument that his stay put placement is at Fusion Academy – Berkeley is unpersuasive and contradicted by the IEP documents and emails Student submitted in support of his motion. Student offers three arguments for why Fusion should be considered Student's stay put placement. First, on page 22 of the August 31, 2022, IEP, labeled "Offer of FAPE – Educational Setting," the IEP document states that Student's school of attendance is Fusion Academy – Berkeley. However, any ambiguity about this statement about his school of attendance is clarified immediately after the notation, with the statement: "[Student] is currently enrolled by parent at a private school."

Second, Student argues that Student's placement at Fusion was partially funded at some point in time by Oakland through a settlement agreement. However, the settlement agreement in question explicitly stated that Fusion was not Student's stay put placement, and that Student was considered privately placed.

Third, Student argues the August 31, 2022, IEP, was ambiguous and that Parent believed the offer of placement to be Fusion Academy – Berkeley. This argument fails

for several reasons. Even if Parent was sincerely confused about the offer of placement, her good faith mistake would not convert Fusion Academy to Student's placement when Oakland did not intend to offer such a placement in the IEP. Furthermore, Student's argument that Parent believed Fusion to be the placement offer is contradicted by the email from Barbara Kass on August 31, 2022. The evidence submitted by Student shows that Parent knew Oakland was offering Life Academy as of the day of the IEP, that Parent toured Life Academy on September 7, 2022, and that on September 30, 2022, Parent consented to the IEP in its entirety.

Finally, all parties agree that Oakland has never implemented Student's August 31, 2022, IEP.

Oakland did not offer or implement a placement for Student at Fusion Academy – Berkeley as part of the IEP process. As such, Fusion is not Student's current

educational placement for the purposes of stay put. Student's motion for stay put at Fusion Academy – Berkeley is denied.

IT IS SO ORDERED.

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Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings