BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BUCKEYE UNION ELEMENTARY SCHOOL DISTRICT AND EL DORADO COUNTY OFFICE OF EDUCATION.	OAH Case No. 2018060728 ORDER DENYING STUDENT'S MOTION FOR STAY PUT WITHOUT PREJUDICE

On June 15, 2018, Student filed a request for due process (complaint) with the Office of Administrative Hearings naming Buckeye Union Elementary School District and El Dorado County Office of Education. On June 15, 2018, Student filed a motion for stay put. Buckeye filed an opposition on the ground that Student did not provide evidence or a declaration regarding Student's last agreed upon and implemented individualized education program to support her motion. El Dorado did not respond to Student's motion. On June 25, 2018, Student filed a motion in support of her motion for stay put. On June 29, 2018, Buckeye filed a second opposition to Student's 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 alleges in her complaint that she has attended Rising Sun Montessori School for approximately six months. Student further contends at the conclusion of the last IEP team meeting Rising Sun's principal stated Student was not welcome to return to Rising Sun for the 2018-2019 school year. Student submitted a motion for stay put at Rising Sun with her complaint. In Support of her motion Student submitted her IEP dated April 16, 2018, which lists her educational setting as a regular classroom at a public day school at Rising Sun. The IEP team meeting notes state the purpose of the IEP team meeting was a 30 day interim placement to introduce new IEP team members and update the IEP to reflect the new school, Rising Sun. The IEP team meeting notes also reflect two IEP team meetings, one on April 16, 2018, and one on May 24, 2018. The notes further reflect that Parent verbally agreed to the recommendations on May 24, 2018. Although not included with her initial motion, Student submitted the signature and consent page of the April 16, 2018 IEP showing that Parent consented to the IEP on May 30, 2018, and again on June 4, 2018.

Buckeye's first opposition to Student's motion argued that Student did not provide evidence or a declaration that the IEP had been consented to or was implemented. Buckeye's second opposition included a declaration from its counsel agreeing that the April 16, 2018 IEP is Student's last agreed upon and implemented education program. Buckeye argues Student's motion should be denied because there is no dispute to stay put.

Student is entitled to remain in her 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, Buckeye has pledged by sworn declaration that the April 16, 2018 IEP is Student's last agreed upon and implemented IEP and there is no dispute as to stay put. Accordingly, Student's motion for stay put is denied.

ORDER

Student's motion for stay put is denied as moot as no dispute exists that Student's the April 16, 2018 IEP is the last agreed upon and implemented educational program.

DATE: June 29, 2018

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings