BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023040728

ORDER GRANTING MOTION FOR STAY PUT

APRIL 27, 2023

On April 20, 2023, Student filed a motion for stay put. On April 24, 2023, Newport-Mesa Unified School District filed an opposition on the ground that Student's stay put placement is at his local school based on residence, and since Student had moved residences, his school of residence is not the school he was attending at the time the complaint was filed. Newport-Mesa objects to Student remaining at Harborview School as requested in Student's motion because that is a school of choice, not Student's school of residence. Instead, Newport-Mesa asks OAH to deny Student's motion as it believes the stay put placement is the last agreed upon and implemented IEP that lists a local school based on residence as the placement. Based on Student's current residence, Newport-Mesa claims Student's local school based on residence is Newport Heights.

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.)

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's request to remain at the current placement, Harbor View Elementary School, is granted as stay put. Harbor View is listed as the local school based on residence and school of attendance in the last agreed upon and implemented individualized education program, called IEP, dated March 24, 2022. Newport-Mesa objects to Student's placement at Harbor View and asserts that is not the stay put placement. Newport-Mesa contends that Student's stay put is in a general education placement with the supports listed in the March 24, 2022 IEP at his local school based on Student's current residence. Newport-Mesa contends that since Student moved residences, Student's school of residence is now Newport Heights Elementary School.

Newport-Mesa states that when Student's March 24, 2022, IEP was developed, Student's school of residence was Harbor View. Newport-Mesa contends that Student

notified it on February 1, 2023, that Student's residence had changed and Student applied for an intra-district transfer to continue attending Harbor View. Newport-Mesa asserts that Parent and Student signed a Contract for Continuation of Intra-District Transfer on February 15, 2023, and Student agreed he would abide by behavior expectations as a condition for his continuation as an intra-district transfer student. Newport-Mesa argues that by signing the contract, Student and Parent agreed that the intra-district transfer would be revoked and Student would need to enroll in his school of residence if he did not abide by the contract terms. Newport-Mesa claims Student violated the terms of the contract by violating the school code of conduct on March 1, 2023, and March 9, 2023. Newport-Mesa contends Harbor View revoked the intra-district transfer based on the terms of contract, and informed Student on March 28, 2023, that he needed to enroll in his local school based on residence, Newport Heights.

Student's reply brief claims that Student formally applied for the intra-district transfer in February 2023, but Student had been living at his current residence, since the end of the 2019 calendar year. Student asserts that the staff at Harbor View knew he moved residences, had visited Student at his new residence in 2020, and Parent spoke with an employee at the district office in 2022 about moving. The IEP team meeting notes of April 30, 2021, reflect that Parent informed the IEP team that they had submitted a transfer request for Student to remain at Harbor View because they moved to the attendance area of another school within the district. Although Parent informed the IEP team that Student had moved residences, at a later IEP team meeting on March 24, 2022, Student's IEP reflected Harbor View. Student argues that Harbor View is the only school he has attended and that placement in Student's local school based on residence, Harbor Heights, would be a change of placement with new peers, new classes, new teachers, and a new aide. Student also denies that Student committed a

violation of the school code of conduct as alleged and has listed that as a claim in his complaint.

An issue in Student's complaint that is scheduled for an expedited due process hearing involves whether Newport-Mesa denied Student a free appropriate public education by changing Student's placement after the alleged disciplinary violations. Student's stay put placement is based on the last agreed upon and implemented IEP dated March 24, 2022, which lists Harbor View as his local school based on residence and school of attendance. Newport-Mesa argues that the parties reached an agreement otherwise, namely that the transfer would be automatically revoked upon a disciplinary infraction, thereby changing Student's stay put placement. This defense raises a question of fact requiring an evidentiary hearing to resolve. As a result, Student's placement at Harbor View is the stay put placement while this matter is pending.

ORDER

Student's request for stay put at Harbor View Elementary School is granted.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings