BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013031004
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013040364 ORDER DENYING MOTION FOR STAY PUT

On March 26, 2013, Student filed a request for due process hearing (complaint) in Case No. 2013031004 alleging denials by the West Contra Costa Unified School District (District) of Student's right to a free appropriate public education (FAPE)(First Case). On April 9, 2013, the District filed a complaint against Student in Case No. 2013040364 alleging that Parent was obstructing the completion of a triennial assessment and seeking an order allowing it to complete the assessment without conditions imposed by Parent (Second Case). On May 7, 2013, Student filed a request to amend his complaint in Case No. 2013031004, which was granted during a prehearing conference (PHC) on May 8, 2013. During that PHC the two matters were consolidated.

Student's amended complaint, deemed filed on May 8, 2013, contained a motion for a stay put order. On May 10, 2013, the District filed an opposition to the motion, and on May 12, 2013, Student filed a reply.

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 (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

DISCUSSION AND ORDER

On May 26, 2010, the parties entered into a Settlement Agreement to resolve two due process matters and two administrative complaints then pending before the California Department of Education. The Agreement determines Student's educational program through the 2012-2013 school year (SY) and extended school year, which the Agreement defines as ending the day before the 2013-2014 school year begins. In general, the Agreement provides that Student's special education and related services during the years in question are to be delivered at home under the supervision of Parents. Among many other things the Agreement provides that the District will conduct triennial assessments in the spring of 2013.

Student requests an order determining that his stay put placement is the home placement established by the May 26, 2010 Settlement Agreement. The District argues that Student's request is premature and contrary to the Settlement Agreement, which contains a provision agreeing to a different stay put arrangement.

The Settlement Agreement was filed by the District in opposition to a previous stay put motion in *West Contra Costa Unified School District v. Student*, OAH Case No. 2013030286, which involved the same subject matter as the Second Case but was dismissed on April 5, 2013.[1] The Agreement provides that after the triennial assessment the District will hold a triennial IEP meeting no later than May 1, 2013. The Agreement further provides that if the District makes an IEP offer for the SY 2013-2014, Parent disagrees with the offer, and either party files a due process complaint to resolve the dispute, then Student's stay put placement will be the District's offer developed at the triennial IEP meeting.

Student now contends that Student's current home placement should be the stay put placement because 1) the May 26, 2010 Settlement Agreement is ambiguous, unreasonable, and inoperative, and 2) the District has breached the Agreement by failing to complete the triennial assessment it agreed to. The District alleges in Case Two that it has not completed the psychoeducational portion of the triennial assessment because Parent has refused to produce Student for the assessment unless she can observe the assessment through a one-way window and listen to it in real time. Whether the Agreement is valid and whether it is the District or Parent who is in breach of the Agreement cannot be resolved on a stay put motion and must instead be resolved at a full hearing.

More importantly, Student's stay put motion is not yet ripe for decision. From the pleadings it appears that most of the triennial assessment has been completed. The parties agree that speech and language and occupational therapy assessments have been completed. Mother

[1] Official notice is taken of the Settlement Agreement.

asserts that a behavioral assessment has also been completed, and that only the psychoeducational portion of the triennial assessment remains to be completed.

It also appears from the pleadings that the District convened Student's triennial IEP team meeting on April 24, 2013. Parent attended the meeting, and the parties began to discuss Student's placement for SY 2013-2014. The meeting was continued to May 9, 2013. Parent was unable to attend that meeting but has now agreed to attend a continued session of the meeting on May 21, 2013. Between now and the start of SY 2013-2014 it is likely that the triennial IEP meeting will be concluded and the District will make an offer for SY 2013-2014. Parent may or may not agree to the offer. The parties may or may not seek to resolve a dispute over the validity of the offer in due process. Depending on those contingencies, Student's stay put placement pursuant to the Agreement may or may not be defined by the triennial offer.

If the parties' disputes continue, Student's stay put placement will have to be established by the first day of SY 2013-2014, which is nearly three months in the future. At present, however, his placement is stable because he is in the home placement upon which the parties have agreed, and under the Agreement he will remain in that placement until the day before the SY 2013-2014 begins. Developments in the next three months may make a ruling by the Office of Administrating Hearings on Student's stay put placement unnecessary. Those developments may also determine what the stay put placement will be. Therefore any ruling on that question now is premature.

Student's motion for stay put is DENIED.

Dated: May 20, 2013

/s/
CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings