BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015030137 ORDER DENYING MOTION FOR STAY PUT

On February 27, 2015, Student filed a motion for stay put. On March 3, 2015, District filed an opposition.

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)[1]; 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.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

DISCUSSION

Student seeks stay put under the terms of his February 27, 2014 individualized education program, as modified by an amendment on December 1, 2014. Student contends that the December 1, 2014 IEP amendment provided for Student to attend school in the afternoons and receive home instruction for three hours per week to make up for missed morning classes, as an accommodation to Student's insomnia. Student argues that this arrangement is his current educational program, but that District intends to end home

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

instruction on February 27, 2014. District disagrees, and contends that the December 14, 2014 amendment was a temporary arrangement intended to transition Student to a full-time program by the end of February 2015, and cannot be the basis for a stay put order.

Neither Student nor District submitted a sworn declaration as to the facts in this matter. Student submitted pre- and post-December 2014 letters and prescriptions purporting to be from his pediatricians, that explain that Student is under treatment for insomnia and recommend that instructional hours be arranged to accommodate Student's sleep schedule, but these documents were not authenticated, and District has not conceded their authenticity or consideration in development of Student's IEP's. Student submitted a copy of his recent February 19, 2015 IEP, and argued that Parent consented to the new IEP except for discontinuance of his "home hospital and modified schedule." However, Student did not submit a complete copy of his last agreed upon and implemented IEP purporting to set out the terms of such an arrangement, only isolated pages from the December 1, 2014 amendment to the February 27, 2014 IEP.

Student has not provided evidence of the complete terms of the February 27, 2014 IEP and December 1, 2014 amendment that he seeks to have enforced as stay put. Accordingly, Student's motion for stay put is denied, without prejudice to Student filing a sufficiently supported motion.

IT IS SO ORDERED.

DATE: March 6, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings