BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: KERN COUNTY SUPERINTENDENT OF SCHOOLS, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017110824 ORDER DENYING DISTRICT'S MOTION FOR STAY PUT

On November 17, 2017, Kern County Superintendent of Schools filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Parent on behalf of Student. On March 2, 2018, OAH granted and deemed filed Kern County's motion to file an Amended Complaint. The issue in District's amended complaint is whether an "Administrative Amendment dated November 19, 2017," which offered Student residential placement, was an offer of FAPE such that District may implement the amendment without parental consent.[1]

On March 2, 2018, District filed a motion for stay put. On March 7, 2018, Student filed an opposition to District'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)[2]; 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.)

[1] A separate case involving the same parties and the same time period is also before OAH at this time. Student filed a due process complaint in OAH Case No. 2017110316. The issue in Student's case is whether District denied Student a FAPE by failing to implement an October 10, 2017 IEP offer of placement for Student. The undersigned ALJ heard Student's case on February 13, and 14, 2018. Student's case is under submission and a decision has not been issued.

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

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 School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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

Both parties offered evidence in support of their position on stay put. The parties generally do not disagree that Student, who is over eighteen years of age, requires a therapeutic educational placement with a residential component and that no appropriate residential placement exists in Student's district of residence. The parties disagree over the residential component of the placement, specifically where it should be and how to fund it. That dispute is not at issue in, and is not controlled by, determining the placement called for in Student's IEP that was implemented before the dispute arose.

District's motion seeks an order determining that Student's stay put should be either a "residential placement" or something else ordered by OAH. Student argues that the October 10, 2017 IEP, which defines placement at San Diego Center for Children with reimbursement/funding for lodging, food and travel, is the last agreed upon and implemented IEP. District submitted the July 7, 2017 IEP as evidence, along with a declaration under penalty of perjury establishing certain facts. Father signed and consented to the July 2017 IEP to allow District to implement the educational placement and services in that IEP, notwithstanding that the parties had not yet agreed as to how to fund Student's lodging and food expenses. District implemented the educational placement and services as identified in the July 7, 2017 IEP. Whether or not District implemented the October 10, 2017 IEP is at issue in Student's case and not yet resolved. Therefore, pending the outcome of this matter, Student's stay put is the educational placement contained in the July 7, 2017 IEP.

District's motion for stay put is denied.

IT IS SO ORDERED.

DATE: March 14, 2018

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Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings