BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CONTRA COSTA SCHOOL OF THE PERFORMING ARTS.

OAH CASE NUMBER 2023030551

ORDER DENYING MOTION FOR STAY PUT

April 12, 2023

On April 3, 2023, Student filed a motion for stay put. On April 6, 2023, Student filed Student's Non-Opposition for Stay Put arguing that the motion should be granted because Contra Costa School of the Performing Arts, called Contra Costa, failed to file opposition to it.

Later that day, on April 6, 2023, Contra Costa timely filed an opposition on the following grounds: that Student was unilaterally placed at Bayhill High School; no individualized education program, called IEP, offered or determined that Bayhill was an appropriate placement; and, no IEP has been consented to which listed Bayhill as the placement.

On April 7, 2023, Student filed a reply and supporting declaration asserting that Contra Costa's opposition was untimely. Thus, Student maintained, Contra Costa's opposition was time-barred, and Student's motion for stay put should be granted.

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

DISCUSSION

Student contends that on October 28, 2021, Parent requested for Student to be evaluated for special education and Parent signed an assessment plan dated November 9, 2021. Student claims that Contra Costa has not conducted an evaluation of Student to determine whether she is eligible for special education. On July 27, 2022, Parent informed Contra Costa that they would be unilaterally placing Student at Bayhill High School, a non-public school, on August 11, 2022. On August 11, 2022, Parent contracted and enrolled Student at Bayhill High School; Student's first day of school was August 15, 2022.

On October 10, 2022, the parties held an IEP team meeting. The IEP team found Student eligible for special education and drafted an IEP based upon a private assessment obtained by Student. In the IEP, Contra Costa offered Student placement at their charter school. Student told Contra Costa that Parents signed a contract with Bayhill on August 11, 2022, and claimed she did not have an option to return to Contra

Costa based on the financial obligation to Bayhill. On March 9, 2023, Parents consented to Student's eligibility for special education but did not consent to the remainder of the IEP.

Contra Costa argues that it timely responded to Student's unilateral notice of placement with a prior written notice that explained its basis for denying Student's request for reimbursement and offered an IEP team meeting. Contra Costa asserts that at the October 10, 2022 IEP team meeting, it offered placement in the general education environment, not Bayhill. Contra Costa contends Student should be barred from invoking Bayhill as stay put during the pendency of the proceedings. Here, Student failed to establish that Bayhill was the placement in the last agreed upon and implemented IEP. Thus, Student's request for stay put is denied.

Student cited *Sam K. ex Rel. Diane C. v. Hawaii Dept. of Educ*. (9th Cir 2015) 788 F.3d 1033, to support her position that she is entitled to stay put at Bayhill. *Sam K.* is distinguishable from the instant matter. In *Sam K.*, the Court was required to interpret the term "unilateral" placement in a Hawaii statute, which if found, prevented Parents reimbursement for tuition. The *Sam K.* Court found Student had been eligible for special education and the parties entered into a settlement agreement resolving their disputes for the prior three years, including reimbursement for tuition at a private institution. After entering into the settlement agreement in the Spring, the department of education failed to make an IEP offer until more than halfway through the following school year, the school year at issue. Student remained at the private institution and requested reimbursement for tuition. At the due process hearing, the hearing officer determined the department of education's placement offer was not appropriate and the private institution was appropriate. The Court determined that placement was not unilateral because the department was aware, by the terms of the settlement

agreement, that Student had been attending the private school. As a result, the Court found the Hawaii statute did not prevent reimbursement to parents.

In this matter, Student was found eligible for special education after Parents enrolled Student at Bayhill. It is uncontested that Contra Costa's offer of placement was at the Contra Costa charter school and that Student has not consented to any placement offered in an IEP. Additionally, a hearing officer has neither determined whether placement offered in Student's IEP is appropriate nor whether placement at Bayhill is appropriate. Student's argument that *Sam K.* is applicable is not persuasive. Nothing in this Order prevents Student from making the same or similar arguments regarding reimbursement at the due process hearing.

ORDER

Student's request for stay put is denied.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings