BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017050108 ORDER DENYING MOTION FOR STAY PUT

On April 27, 2017, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming San Francisco Unified School District. On April 28, 2017, Student filed a Motion for Stay Put.

On May 4, 2017, District filed an opposition on the grounds that it is impracticable and impossible to implement Student's individualized education program at his current school, George Washington High School, because San Francisco Superior Court issued three Civil Harassment Restraining Orders against Student on April 19, 2017. The restraining orders required Student to remain 20 feet away from two teachers and one paraprofessional, while at George Washington High School, and to be subject to a search upon entering school. The restraining orders are in effect until April 19, 2018. District included with its opposition, certified copies of the restraining orders.

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, which has been implemented 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).)

A school district may bypass administrative proceedings and proceed directly to court if the district can demonstrate to the court that exhaustion of administrative remedies would be futile or inadequate. (*Honig v. Doe (1988) 484 U.S. 305,* 326-327.) If the court concludes that exhaustion of administrative remedies is not required before its exercise of jurisdiction, the court may grant injunctive relief prohibiting the Student from his or her stay-put placement if the district demonstrates that maintaining the student in that placement is substantially likely to result in injury either to the child or to others. (*Id*. at p. 328; *Joshua A. v. Rocklin Unified School District* (9th Cir. 2009) 559 F.3d 1036, 1039.)

DISCUSSION

According to Student's last agreed upon IEP, his placement included a program known as the "SOAR" Program for four periods per day, Specialized Academic Instruction for 1000 minutes per week (including SOAR and one Special Day Class), and 60 minutes per week of individual counseling. The SOAR Program was designed to provide intensive supports for students with significant mental health and behavioral needs. Student's school of attendance was listed as George Washington High School. There is only one SOAR classroom at George Washington High School.

On March 20, 2017, there was an incident involving Student that resulted in his paraprofessional, John Marman, his SOAR teacher Lisa Faustino, and his Special Day Class teacher Nicole Warner, obtaining temporary restraining orders against Student. On April 19, 2017, San Francisco Superior Court granted permanent restraining orders, prohibiting Student from coming within 20 feet of Mr. Marman, Ms. Faustino, and Ms. Warner while on school grounds. Based on the restraining orders, District determined it was impracticable and impossible to implement Student's IEP at George Washington High School and instead, on April 21, 2017, assigned Student to Thurgood Marshall High School, a different District school that also has the SOAR Program.

Student contends he should be allowed to remain at George Washington High School pending the conclusion of the due process hearing because District unilaterally changed his placement to Thurgood Marshall High School and he is in his senior year of high school.

District contends that Student's IEP cannot be implemented at George Washington High School with the conditions of the restraining orders and that it can be implemented at Thurgood Marshall High School.

OAH does not have jurisdiction to overturn the restraining orders from San Francisco Superior Court and order District to implement Student's IEP at George Washington High School. Therefore, Student's Motion for Stay Put is denied.

IT IS SO ORDERED.

DATE: May 12, 2017

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Tara Doss
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TARA DOSS
Administrative Law Judge
Office of Administrative Hearings