BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CHULA VISTA ELEMENTARY SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2013090175 ORDER DENYING DISTRICT'S MOTION FOR STAY PUT

On September 5, 2013, the Chula Vista Elementary School District (District) filed with the Office of Administrative Hearings (OAH) a request for due process hearing (complaint) naming Parents on behalf of Student (Student) as respondents. The complaint alleges a single issue: Whether the District has the right to assess Student pursuant to the District's August 17, 2013 Assessment Plan?

On September 5, 2013, the District filed with OAH a motion for stay put. On September 10, 2013, Student filed an opposition to the motion.

In its motion, the District requests that OAH issue an order that Student's stay put placement and services be based on Student's last implemented and consented to Individualized Education Program (IEP) dated September 14, 2010. This IEP was by the Poway Unified School District (Poway), where Student was then enrolled. The District alleges that Student moved within the geographical boundaries of the District in June 2013.

Student contends that Student is currently enrolled and attending "a private parochial school," where he has been attending since the summer of 2011. Additionally, Student contends that stay put is not available to the District.

APPLICABLE LAW AND DISCUSSION

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); 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; *G.M. v. Dry Creek Elementary School District* (E.D. Cal., Dec. 10, 2010) 2010 WL 5136181 at *2.)

Stay put is designed to preserve the status quo by insuring that the child remains in the last placement that the school district and parents agreed was appropriate. (*Millay v. Surry* (D. Me. 2008) 584 F.Supp.2d 219, 230-231, citing *Verhoeven*, 207 F.3d at p. 10.)

Stay put is an automatic injunction issued against a school district to prevent school officials from removing a child from the public school classroom during the completion of the reviewing process. (*School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 373 [105 S.Ct. 1996, 85 L.Ed.2d 385].) Stay put does not authorize a court to order parents to leave their child in a particular placement which the parents feel is not appropriate. It operates to permit parents to unilaterally change placement during the reviewing process without consent of school district officials at their own financial risk. (*Burlington*, 471 U.S. at pp. 373-374.) Here, the moving parties are attempting to compel Parents to maintain a placement and services which they believe is not appropriate. This is not the purpose of stay put and is beyond authority of OAH. (See, *Parents v. Dry Creek Elementary School District et al,* Order Denying District's Motion for Stay Put, OAH Case Number 2010110717/2010091063, January 19, 2011.)

ORDER

The motion is hereby DENIED.

Dated: September 11, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings