BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN JUAN UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018020299 ORDER REQUIRING ADDITIONAL EVIDENCE FOR STAY PUT MOTION

On November 6, 2017, Student enrolled in the San Juan Unified School District in Sacramento County, having moved from the Clear Creek Elementary School District in Nevada County with his mother. Clear Creek is part of the Nevada County Special Education Local Plan Area (SELPA). San Juan Unified School District administers its own Special Education Local Plan Area. On February 6, 2018, Student filed a request for due process hearing challenging whether a November 28, 2017 interim IEP offered by San Juan, provides a free, appropriate public education. Student also filed a motion for stay put, asserting that Student should be allowed to attend Sierra Foothill Academy during the pendency of this dispute. On February 12, 2018, District filed an opposition on the ground that Sierra Foothill Academy was not within the District's boundaries, the District did not contract with Sierra Foothill Academy and that Student's appropriate stay put placement is either a special day class or non-public school within the district boundaries.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her "then-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." 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).)

For purposes of stay put, the current educational placement is typically the placement called for in the student's most recently implemented individualized education program. (*Johnson v. Special Education Hearing Office* (2002) 287 F. 3d 1176, 1180.) However,

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

some exceptions apply to that rule**.** (*Johnson, supra*, 287 F. 3d at p. 1181; *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133 [rev'd on other grounds].) Furthermore, 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.)

DISCUSSION

The difficulty with this Stay Put motion is that it lacks evidence of Student's current placement. While Student attached a June 6, 2017 IEP, there was no declaration authenticating the document. Nor was there evidence as to which school Student attended after he enrolled in the San Juan Unified School District. Nor any evidence that Student attended Sierra Foothills Academy.

Here, Student has not provided adequate evidence of his last agreed upon and *implemented* placement. No evidence has been submitted establishing when Student began attending Sierra Foothills Academy, whether Student has continuously attended Sierra Academy up through filing the complaint, or whether Student attended a different placement upon enrollment in San Juan.

ORDER

Student is ordered to provide evidence of the school(s) attended from the time Student asserts an implemented IEP resulted in enrollment through the time this request for due process was filed. This evidence must be filed and served no later than Tuesday, February 20, 2018. Any response to the evidence provided shall be filed no later than noon on Friday, February 23, 2018.

IT IS SO ORDERED.

DATE: February 14, 2018

DocuSigned by:
Penelope S. Pahl
B3DF836E5DA94F2...

PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings