BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013030286 ORDER DENYING MOTION FOR STAY PUT

On March 18, 2013, Parents, on behalf of Student, served on the West Contra Costa Unified School District (District) a "Response to Due Process Complaint [and] Request for 'Stay Put.'" The attached certificate of service does not indicate that the document was sent to the Office of Administrative Hearings (OAH), and OAH did not receive the document until March 25, 2013.[1]

On March 21, 2013, the District filed an opposition to the motion for stay put.

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

DISCUSSION

On May 26, 2010, the parties entered into a Settlement Agreement to resolve two pending due process matters and two administrative complaints pending before the

[1] Parents are encouraged in the future to serve copies of any pleading simultaneously on OAH and the District and to indicate that service in a proof or certificate of service attached to the pleading.

California Department of Education. The Agreement determines Student's educational program through the 2012-2013 school year and extended school year, which the Agreement defines as ending the day before the 2013-2014 school year begins. In general, the Agreement provides that Student's special education and related services during the years in question are to be delivered at home under the supervision of Parents. Among many other things the Agreement provides that the District will conduct triennial assessments in the spring of 2013.

On March 11, 2013, the District filed the instant request for a due process hearing (complaint) against Student, alleging generally that Parents were interfering in the triennial assessment process.

On March 18, 2013, Parents served on the District (and on March 25, 2013 filed with OAH) a document entitled "Response to Due Process Complaint [and] Request for 'Stay Put.'" All but a single sentence of that document consists of factual allegations responding to the District's complaint. The last sentence of the document states: "The student requests 'stay put' during this due process dispute according to the terms of the settlement agreement signed on May 26, 2010." There is nothing else in the document concerning Student's request for stay put.

Student's motion for stay put must be denied for several reasons. First, the burden of persuasion is in the party making a motion, and Student's motion does not set forth enough information to support the issuance of any order by OAH. Student does not describe his current placement in any detail, does not set forth Student's view on what his stay put placement might be, does not make reference to any facts related to stay put or address any law. It is simply a one-sentence request attached to a pleading filed for another purpose.

Second, Student's motion cannot be adequately understood by reference to the Settlement Agreement, which is attached to the District's opposition. That very lengthy Agreement sets forth in detail an agreement for funding Student's placement for each of the school years 2010-2011, 2011-2012, an 2012-2013 and related ESYs. It contains three separate stay put provisions, each of which is triggered by an event which has not yet happened. One of them is triggered by a claim by the District that Student's needs have substantially changed, followed by an assessment, followed by a dispute between the parties, followed by a due process filing to resolve that dispute. A second stay put provision is conditioned upon the conduct of an IEP meeting on May 1, 2013, to discuss the results of triennial assessments, followed again by a dispute and a due process filing. A third is contingent upon a statement by Parents that they desire a public school placement for Student, followed by an IEP meeting, a dispute, and a due process filing. There is no allegation or evidence that any of these events has occurred.

Third, Student's stay put motion is either premature or unnecessary, or both. There is no allegation in either party's pleading that Student is not actually receiving the program to which he is entitled under the Agreement. At best Student's Response to the Complaint indirectly makes an argument that the parties are engaged in a dispute over the funding of

Applied Behavior Analysis (ABA) services, but there is no claim that Student is not actually receiving theses services under the Agreement, which is in effect until some time in August 2013. Where there is no dispute about a pupil's stay put placement, OAH will deny a request for a stay put order.

Finally, the only order OAH could make on the current record is a generalized order that the District comply with the terms of the Settlement Agreement. Since the District, as it recognizes, is already bound by law to comply with that Agreement, an order to that effect from OAH would be superfluous.

For the reasons above, Student's motion for stay put is DENIED.

Dated: April 02, 2013

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings