BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019120864

ORDER DENYING MOTION FOR STAY PUT

MARCH 9, 2020

On February 6, 2020, Student filed a motion for stay put. Student's motion seeks an order that Irvine Unified School District fund her unilateral private placement at Prentice School pending the outcome of her appeal. On February 11, 2020, Irvine filed an opposition.

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 individualized educational

program, called IEP, placement 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).)

Stay-put applies during the pendency of any administrative or judicial proceeding regarding a request for due process hearing, including the appeals process. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a)(2006); Ed.Code, § 56505 subd. (d); (*Joshua A. v. Rocklin Unified School District* (9th Cir. 2009) 559 F.3d 1036, 1038 [stay-put applies to all pending judicial proceedings, including appeals to a circuit court].)

DISCUSSION

PROCEDURAL HISTORY

On August 22, 2018, Irvine filed a due process complaint with the Office of Administrative Hearings, referred to as OAH, naming Student. On August 23, 2018, Student filed a complaint with OAH naming Irvine. On September 6, 2018, Student filed an amended complaint with OAH. On September 6, 2018, OAH granted Irvine's request to consolidate Student's case with Irvine's case.

Both cases put Irvine's June 2018 individualized education program, referred to as IEP, at issue. Irvine sought a determination that the June 2018 IEP offered Student a free appropriate public education, referred to as FAPE, such that it could implement the IEP without Parents' consent. Parents sought a determination that the June 2018 IEP did not offer a FAPE and sought reimbursement for their unilateral private placement of

Student at Prentice, a certified nonpublic school. Parents placed Student at Prentice beginning in the summer of 2018, after rejecting Irvine's June 2018 offer of FAPE.

In November and December 2018, OAH heard the consolidated matter. On February 19, 2019, OAH issued a written Decision. OAH's Decision found, in part, that Irvine's June 2018 IEP failed to offer Student a FAPE. Accordingly, OAH awarded, among other remedies, reimbursement for tuition and other costs associated with Student's attendance at Prentice.

The parties appealed OAH's decision to district court by filing cross-motions for review. On December 5, 2019, the district court issued an order denying Student's motion and granting Irvine's motion.

The district court vacated OAH's finding that Irvine's offer of modified curriculum was inappropriate and remanded the matter for further consideration. Specifically, the district court found that it was not equipped to make a determination on "whether Student's education at Prentice was a modified curriculum or a curriculum with accommodations." The remand order requires OAH to determine whether Student's education at Prentice was a modified education, and if so, whether that fact changes the determination that "no evidence was presented that modified curriculum would provide a meaningful education benefit consistent with Student's low average cognitive abilities."

STAY PUT

Student seeks, in her motion for stay put, to maintain placement at Prentice with related services in speech and language and transportation, based upon the remedies ordered in OAH's February 19, 2019 Decision. The remedies section of the Decision describes Prentice as, "an appropriate educational placement for Student, which

provided educational benefit." Student conflates this description with a "decision in favor of [Student's] choice of private placement." Because OAH found in favor of Student's private placement, Student argues, the private placement now constitutes her then current educational placement for purposes of stay put.

Student's contentions lack merit for several reasons. First, the description of Prentice as an appropriate educational placement supports the award of an equitable remedy. The equitable remedy at issue was compensatory education in the form of tuition reimbursement. Tuition reimbursement may be awarded for parental private placements considered appropriate, also referred to as proper, under the IDEA. (*Florence County School District Four v. Carter* (1993) 510 U.S. 7, 12-16 [114 S.Ct. 361] (*Florence*); *School Comm. Of Burlington v. Department of Ed. Of Mass.* (1985) 471 U.S. 379, 369 [105 S.Ct. 1996, 2002] (*Burlington*).) Student cites no legal authority that turns equitable remedies in an OAH decision into a stay put placement.

Second, finding a private placement appropriate for purposes of awarding equitable remedies does not equate with "a decision in favor" of Student's choice of private placement. The facts in *Florence* align with the facts of this case. Parents, in *Florence*, filed a due process hearing request to challenge the school district's IEP, believing it did not offer a FAPE. Subsequently, parents unilaterally placed their child in a private school specializing in educating children with disabilities. The Supreme Court in *Florence* upheld the lower court's finding in favor of parents. The Supreme Court held that that parents need not show the private placement offered their child a FAPE under the IDEA, in order to obtain reimbursement. (*Florence*, *supra*, at pp. 12-16.) In so doing, the Supreme Court distinguished between a finding that private placement offered a FAPE and an appropriate education for purposes of reimbursement. The Supreme Court reasoned, citing *Burlington*, that it would be inconsistent with the IDEA's

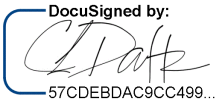
goals to "forbid parents from educating their child at a school that provides an appropriate education simply because that school lacks the stamp of approval of the same public school system that failed to meet the child's needs in the first place." (*Id.* at p. 14.)

Third, Student's first amended complaint did not allege the issue of whether Prentice provided Student with a FAPE. Therefore, whether Prentice provided a FAPE was not heard or decided. It follows that OAH did not render "a decision in favor" of Student's choice of private placement such that Prentice should become Student's stay put.

Student relies on *Clovis Unified School District v. California Office of Administrative Hearings* (9th Cir. 1990) 903 F.2d 635, to support her contention that an administrative decision can transform a parent's unilateral private placement into a stay put placement and that OAH should do so here. Student's reliance on *Clovis* is misplaced. In *Clovis*, parents unilaterally placed student in Kingsview, an acute psychiatric hospital. *Clovis* refused to pay Kingsview's costs, opting to look for another residential placement. Student filed a request for due process hearing to determine whether she was entitled to residential placement at Kingsview, under the IDEA, at Clovis' expense. After a decision in student's favor, the parties appealed. During the appeal process, the courts found that Kingsview was student's stay put placement based upon the administrative decision in her favor. In *Clovis*, student's choice of private placement was squarely at issue and, therefore, a matter heard and decided in favor of student. On that basis, the private placement became student's stay put placement. Such is not the case in this matter.

Student has not provided a factual or legal basis supporting her contention that Prentice constitutes her stay put placement. Accordingly, the motion for stay put is denied.

IT IS SO ORDERED.



Cole Dalton

Administrative Law Judge

Office of Administrative Hearings