

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013100320

ORDER DENYING MOTION FOR
STAY PUT WITHOUT PREJUDICE

On October 7, 2013, Student filed a request for due process hearing (complaint) that included a separate motion for stay put (Motion). The Motion did not include a declaration under penalty of perjury, but attached an unauthenticated copy of an individualized education program (IEP) dated September 13, 2013, in which Student's Mother consented only to services but not placement, and an unauthenticated, unsigned and undated copy of a final settlement agreement. On October 10, 2013, Student filed another copy of his motion which was erroneously entitled "Student's Request for a Due Process Hearing and Mediation; Notice of Representation." The new motion was identical to the one filed on October 7, 2013, except it attached a signed and dated July 25, 2013, but still unauthenticated, copy of the same settlement agreement. District did not file a response to the Motion.

A special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); Ed. Code, §§ 56505, subd. (d), 48915.5.) Stay put operates automatically upon due process filing. (See *Casey K. v. St. Anne Community High School District No. 302* (7th Cir. 1998) 400 F.3d 508, 511.) For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Board of Education* (6th Cir. 1990) 918 F.2d 618, 625.)

Here, Student argues that his placement for stay put purposes be as set forth in Paragraph 7¹ of the July 25, 2013 settlement agreement (the Agreement). Paragraph 7 states:

¹ In his motion at paragraph 7, page 3 line 6, Student argues that he is "not filing this motion for stay put pursuant to Paragraph 7 of the July 2013 settlement agreement." Presumably this is a typographical error and will be interpreted as meaning "now," by the undersigned ALJ.

“Should a disagreement regarding placement arise at the IEP meeting as referenced in paragraph 5 of this Agreement, the Parties agree that placement will be General Education at current resident school, Castelar Elementary, with 1800 minutes per week of District Behavior Intervention Implementation (BII), District Behavior Intervention Development (BID) for 6 hours per month and Language and Speech (LAS) 60 minutes per week.”

Paragraph 5 of the settlement agreement requires District to develop an assessment plan for an occupational therapy assessment and provide it to Parents by August 30, 2013. It does not refer to an IEP meeting. However, Paragraph 6 of the Agreement, which refers erroneously to assessments in Paragraph 4, states that an IEP will be held within legal timelines to review the assessment, presumably referred to in Paragraph 5. Student argues, without evidentiary support, that the District did not timely provide Parents with the Assessment Plan, and therefore Paragraph 7 should be operative as to his stay put.

The September 13, 2013 IEP is not instructive as to stay put for several reasons. First, it states that it is intended to implement the terms of the Agreement, which *conditionally* provides for stay put placement. Second, Mother signed this IEP but disagreed with the placement offer which the IEP specified would be Lockwood Elementary effective September 25, 2013, not Castelar as stated in the Agreement. Third, Mother indicated on the signature page that she only agreed to offered services, which provided for language and speech services 120 minutes per month on a frequency of one to five times a week; 1800 minutes of compensatory language and speech; 20 minutes of language and speech weekly during extended school year (ESY); and 30 hours of compensatory language and speech by a non-public agency.

Student has not met his burden of establishing what Student’s stay put placement should be. First, Student has not provided a copy of his last agreed upon and implemented IEP that identifies what his last agreed upon and implemented placement was. Second, whether or not the conditions precedent to operation of Paragraph 7 of the Settlement Agreement have been met is a matter of fact which Student has not established through credible evidence. By the terms of the Agreement, placement in general education at Student’s resident school, Castelar Elementary, would be stay put only if there has been a disagreement regarding placement arising at an IEP meeting following the occupational therapy assessment. Therefore, there is no basis upon which to conclude that the Agreement, even if it was admissible, which has not been established, controls stay put.

Student's motion for stay put is denied without prejudice. If Student desires to seek stay put, he may re-file his motion providing that it is supported with a declaration under penalty of perjury stating the factual basis supporting Student's request for stay put, together with a copy of Student's last signed and implemented IEP, and fully executed and dated copies of any other documents Student contends support his request for stay put.

IT IS SO ORDERED.

Dated: October 14, 2013

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings