

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. 2013100372

ORDER GRANTING MOTION FOR
STAY PUT

On October 8, 2013, Student filed a Request for Due Process Hearing (complaint) and a Motion for Stay Put. District has not opposed the Motion for Stay Put. For the reasons set forth below, Student's motion for stay put is granted.

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.)

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.)

Student is entitled to remain in his last agreed upon and implemented placement while a dispute is pending and an order for stay put is generally not required unless a dispute over placement exists.

DISCUSSION

Student's last agreed upon and implemented individualized education program (IEP) was dated March 20, 2013. The IEP provided 1600 minutes per week, 100 percent of his time, outside of general education, and specified Student's placement was Banneker Special Education Center. The IEP provided for adaptive physical education because of Student's

multiple disabilities, and adaptive physical education was determined to be the least restrictive alternative.

Here, Student has alleged a dispute exists as to Student's placement and services while the dispute is pending. Parent's affidavit states District has, commencing with the current school year, moved Student to Avalon Gardens, an adjoining general education elementary school, for 39 minutes per day to participate in physical education, arts, music, theater and dance. Parent objects to this placement because Student is hard of hearing, severely mentally delayed, he requires adaptive physical education, and as a result of this change Student has suffered injuries as a result of this placement. Parent further declares District has "stopped for the moment" due to Student's injuries but Parent has not been assured District will not resume this change in placement. Student requests OAH issue an order providing Student's stay put placement is Banneker Special Education Center without participating in general education classes or activities at Avalon Gardens during the pendency of the due process proceedings.

District has not challenged either the placement or services contained in Student's last agreed upon and implemented IEP and does not contend there is no dispute as to his current placement. Accordingly, Student is entitled to stay put placement at Banneker Special Education Center for 1600 minutes per week, 100 percent of his time, outside of general education, and related services, including adaptive physical education, provided by his March 20, 2013 IEP.

ORDER

Student's motion for stay put is granted.

Dated: October 21, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings