

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014050317

ORDER GRANTING MOTION FOR
STAY PUT

On May 19, 2014, Student's parent on behalf of Student (Student) filed a motion for stay put. On May 22, 2014, Mt. Diablo Unified School District (Mt. Diablo) filed a response to the motion.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education pupil 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 pupil'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

Pursuant to Student's IEP signed on June 17, 2013, Student currently attends a special day class at a middle school with mainstreaming opportunities. On April 30, Student received a notification of an "assignment" of Student to a different middle school for the 2014 – 2015 school year. Student's parent was very concerned when Student received that "assignment" notice. Student wants to maintain Student's current placement during the extended school year this summer and next year while this due process case is pending.

Mt. Diablo's response papers explain that the district has no intention of changing Student's placement outside of the IEP process. According to Mt. Diablo, the parties have been discussing Student's placement and Mt. Diablo offered Student a placement at the other middle school. While Student's parent is considering that offer, Mt. Diablo took steps to hold a spot open for Student at that other placement in case Student's parent agreed to the change. The "assignment" letter was generated automatically because the space was reserved, not because Mt. Diablo plans to move Student without parental consent. Mt.

Diablo agrees that the June 17, 2013 IEP sets forth Student's stay put placement and services.

ORDER

Student motion for stay put is granted. Student shall remain in Student's current middle school placement pursuant to the June 17, 2013 IEP during the pendency of the instant case.

DATE: May 23, 2014

/s/

SUSAN RUFF

Administrative Law Judge

Office of Administrative Hearings