

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2014050135

ORDER DENYING MOTION FOR
STAY PUT

On July 25, 2014, Student filed a motion for stay put, seeking to require West Contra Costa Unified School District (District) to continue providing Student special education and related services even though Student was placed in a licensed children's institution outside of District's boundaries approximately 10 months ago by a regional center for the developmentally disabled. District did not file 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 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.)

A "licensed children's institution" means a residential facility that is licensed by the state, or other public agency having delegated authority by contract with the state to license, to provide nonmedical care to children, including, but not limited to, individuals with exceptional needs. (Ed. Code, §56155.5, subd. (a).)

Where individuals with exceptional needs are placed in a licensed children's institution by a regional center for the developmentally disabled, the "special education local plan area shall be responsible for providing appropriate education to individuals with

exceptional needs residing in licensed children's institutions . . . located in the geographical area covered by the local plan." (Ed. Code, §§56155, 56156.4, subd. (a).)

DISCUSSION

Student's complaint and stay put motion each allege that Student "currently resides" at New Yosemite House in Oakland, California, and that he has been there since October 2013. Student describes that placement as a "crisis program." After Student had resided in Oakland for approximately 10 months, District provided prior written notice to Student's parents that because the Regional Center of the East Bay had placed Student in a licensed children's institution outside of District's geographical boundaries almost 10 months ago, District did not consider Student's residence outside of District to be temporary and would no longer provide Student special education and related services. District advised Student's parents to contact the school district covering the geographical area that includes New Yosemite House to obtain special education and related services for Student.

Student's motion does not dispute District's assertions that New Yosemite House is a licensed children's institution as defined by Education Code section 56155.5, subdivision (a), that Student was placed in New Yosemite House by a regional center for the developmentally disabled, or that New Yosemite House is outside of District's geographical boundaries.

Based on Student's current residence at a licensed children's institution and the lack of dispute regarding how Student came to reside in a licensed children's institution outside District's geographical boundaries, and based on Student's failure to demonstrate that District is any of the possible entities responsible for providing appropriate education pursuant to Education Code section 56156.4, subdivisions (a) through (c), at this time, Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: August 1, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings