

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014071052

ORDER PARTIALLY DENYING
MOTION FOR STAY PUT AND
DEFINING STAY PUT

On August 21, 2014, Student filed a motion for stay put, supported by an advocate's declaration and a copy of a May 2011 individualized education program. On August 26, 2014, District filed an opposition, supported by a declaration and authenticated exhibits. For the reasons discussed below, Student's motion for stay put is partially denied; Student is entitled to stay put based upon his August 27, 2013 individualized education program.

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)¹; 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.)

DISCUSSION

Student is 20 years old and eligible for special education. He has assigned his educational rights to his father. His motion for stay put includes a purported declaration from an educational advocate and a copy of a signed individualized education program dated

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

May 12, 2011, which Student contends should be the basis for his stay put during the pendency of this matter.

District's opposition challenges the motion on several grounds. First, District contends that Student's motion is almost an exact replica of a stay put motion filed in 2011 in an earlier OAH due process matter, with "cut-and-paste" modifications. District attached a copy of the previous motion, in its entirety. District points out several inconsistencies and comparisons between the 2011 and 2014 motions, casting doubt on the credibility of Student's contention that the May 12, 2011 IEP is the last agreed upon and implemented IEP.

District attached an authenticated copy of a signed August 27, 2013 IEP, which District asserts it has implemented when Student has attended his educational program. The IEP meeting was attended by Student and his father, and the IEP was signed by both, in which they agreed to the IEP in its entirety. District also attached a copy of a California Department of Education compliance order which observes that Student's last IEP is the August 27, 2013 IEP.

District contends that Student is entitled to stay put based on the last agreed upon and implemented dated August 27, 2013 IEP. The educational program, as outlined on page 10 of the IEP, consisted of:

1. Specialized Academic Instruction: 60 minutes two times per week through the RSP Independent Study program in a one-to-one setting with two weekly appointments and assignments to be completed at home;
2. Other Transition Service: 60 minutes 1 time per year consisting of Resource Specialist support in investigating potential careers and transition options into community college and trade/training programs;
3. Extended School Year Specialized Academic Instruction: 60 minutes, once a week, in a separate classroom in a public-integrated facility;
4. Supplementary Aids, Services and Supports entailed one-to-one instruction with a modified curriculum.

Student's motion appears to be a replica of the 2011 stay put motion, which contends that his May 2011 IEP should be stay put. The current motion appears to be a "cut and paste" version of the 2011 stay put motion with no substantive modifications; however, Student has made no reference in his motion to the August 27, 2013 IEP, which contains his and his father's signatures. As such, Student has not met his burden of proving that the May 2011 IEP is the last agreed upon and implemented IEP such that it would form the basis of stay put.

However, District has offered an authenticated copy of Student's signed August 27, 2013 IEP, which it credibly contends it began implementing on August 28, 2013. As such, Student is entitled to stay put based on the educational program offered in the August 27, 2013 IEP, as detailed above.

ORDER

1. Student's motion for stay put on the basis of the May 12, 2011 IEP is denied.
2. Student's stay put during the pendency of this matter shall be based upon the August 27, 2013 IEP, and specifically:
 - a. Specialized Academic Instruction: 60 minutes two times per week through the RSP Independent Study program in a one-to-one setting with two weekly appointments and assignments to be completed at home;
 - b. Other Transition Service: 60 minutes 1 time per year consisting of Resource Specialist support in investigating potential careers and transition options into community college and trade/training programs;
 - c. Extended School Year Specialized Academic Instruction: 60 minutes, once a week, in a separate classroom in a public-integrated facility;
 - d. Supplementary Aids, Services and Supports entailed one-to-one instruction with a modified curriculum.
3. All dates in this matter are confirmed unless otherwise ordered.

DATE: August 28, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings