

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014090112

ORDER DENYING MOTION FOR
STAY PUT AND CLARIFYING
TERMS OF STAY PUT

On October 15, 2014, Student filed a motion for stay put, which was supported by a declaration from Student's mother, Student's last agreed upon and implemented individualized education program, and a variety of unauthenticated exhibits. District filed an opposition to the motion on October 20, 2014 supported by a declaration under penalty of perjury from the executive director of special education for District accompanied by authenticated exhibits. Student filed a response to District's opposition on October 22, 2014.

For the reasons discussed below, Student's motion for stay put at Center for Change is denied; however Student's stay put shall be placement consistent with Student's September 26, 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.)

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

DISCUSSION

Student's last agreed upon and implemented IEP, dated September 26, 2013, provided for placement in a nonpublic residential school, outside of California, in a regular classroom/public day school at Alpine Academy. Student attended Alpine Academy until November 19, 2013, when Alpine Academy discharged her due to Student's serious emotional and medical issues that Alpine Academy was not equipped to address. Student contends that, after Alpine Academy discharged her, District failed to offer Student any comparable placement, necessitating Parents to unilaterally place her in the Residential Unit at Center for Change in Utah, which is a hospital residential treatment facility and is not a California certified non-public school. Student has been frequently hospitalized since her discharge from Alpine, and, over the past two years, has missed more days of school than she has attended. Student seeks stay put at Center for Change, at District's expense, arguing that District failed to provide her with a placement consistent with her IEP after her discharge from Alpine, which resulted in Parents unilaterally placing her at Center for Change. Neither party offered evidence that Student was ready for discharge from the hospital treatment facility or to return to her educational placement.

The evidence offered by both parties established that Alpine Academy was no longer able to provide Student with the educational services called for in her September 26, 2013 IEP due to its inability to address her serious emotional and medical issues. Student required medical and psychiatric intervention at a hospital facility, and Parents placed her at Center for Change for that reason. District does not dispute that it did not offer a placement for Student while she was under the medical care of the hospital facility at Center for Change. Parents contend that, because District did not offer Student an educational placement during that time, it should pay for Student's stay put at Center for Change.

District contends that it does not disagree that it must provide Student with stay put for her educational program consistent with Student's September 26, 2013 IEP, when she is physically and medically capable of being placed at such a placement. District persuasively argues, however, that it is not obligated to provide and fund Student's stay put at Center for Change in Utah. Whether or not District may ultimately have some responsibility for reimbursement to Parents for their unilateral placement at Center for Change is not an issue to be decided in a stay put motion, but must be decided at a hearing.

For the reasons discussed above, Student's request for stay put at Center for Change is denied. However, Student is entitled to stay put at District's expense during the pendency of this matter, consistent with the terms of her September 26, 2013 IEP, and specifically at a nonpublic residential school, in a regular classroom/public day school, with the supports and services specified in the September 26, 2013 IEP.

ORDER

1. Student's request for stay put at Center for Change in Utah is denied
2. If Student's medical needs allow, Student's stay put is a placement that is consistent with her September 26, 2013 IEP, specifically at a nonpublic residential school, in a regular classroom/public day school, with the supports and services specified in the September 26, 2013 IEP.

DATE: October 23, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings