

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO COUNTY OFFICE OF
EDUCATION.

OAH Case No. 2015050709

ORDER DENYING MOTION FOR
STAY PUT WITHOUT PREJUDICE

On May 11, 2015, Student filed a motion for stay put. The motion was not supported by any authenticated evidence or a declaration under penalty of perjury. District did not file an opposition. Although Student is statutorily entitled to stay put, the motion is denied without prejudice for the reasons discussed below.

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.)

DISCUSSION

Student’s motion fails to attach a copy of the last agreed upon and implemented IEP which defines what the terms of Student’s stay put should be. The complaint alleges that “an IEP was signed on March 24, 2014.” Student offered no authenticated evidence that parent consented to the IEP offer, or whether the IEP was in fact implemented.

The IDEA provides that Student is entitled to stay put based on the terms of the last agreed upon and implemented IEP during the pendency of this matter. District has not opposed the motion or disputed that Student is entitled to stay put.

However, without more information, supported by a declaration under penalty of perjury and a copy of the last agreed upon and implemented IEP, Student's request that OAH "enjoin the District and SELPA from modifying or terminating any special education and/or related services to the Petitioner" is denied without prejudice.

IT IS SO ORDERED.

DATE: May 21, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings