

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WESTSIDE UNION SCHOOL DISTRICT.

OAH Case No. 2015050832

ORDER DENYING MOTION FOR
STAY PUT

On July 6, 2015, Student filed a motion for stay put. On July 9, 2015, District filed 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)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.)

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].)

DISCUSSION

Student seeks stay put at Sundown Elementary under the terms of her December 23, 2014 IEP. Student contends that her inter-district permit to attend District, which is not her school district of residence, was impermissibly revoked. District contends that Student has

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

not established that the IEP attached to her motion is Student's last agreed upon and implemented IEP for stay put purposes.

Student did not submit a sworn declaration as to the facts in this matter. The unauthenticated IEP attached to the motion, which is heavily annotated, states both that Student attends Sundown Elementary and that Student attends Rancho Vista School, rendering her last placement unclear. Student also attached a copy of an inter-district permit policy, which she contends is District's policy. Student argues that the policy bars revocation of her permit, but the document is not on District letterhead or otherwise authenticated. No admissible evidence of an inter-district transfer was submitted.

Student has not provided admissible evidence that her December 23, 2014 IEP is the last agreed upon and implemented IEP, or that District is her school district of residence or otherwise obligated to provide Student with a FAPE.

Accordingly, Student's motion for stay put is denied, without prejudice to Student filing a sufficiently supported motion.

IT IS SO ORDERED.

DATE: July 20, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings