

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAFAEL CITY SCHOOLS

OAH Case No. 2015070341

ORDER DENYING MOTION FOR
STAY PUT

On July 20, 2015, Student filed a motion for stay put. On July 16, 2015, San Rafael City Schools filed an opposition on the ground that Student resides in Richmond, California and, therefore, is not a resident of City Schools.¹ On July 28, 2015, OAH issued an order for additional information on motion for stay put. In response, on July 30, 2015, City Schools filed a declaration of Amy Baer, City Schools' Executive Director of Student Support Services, and on July 31, 2015, City Schools filed an amended declaration of Amy Baer. In response to Ms. Baer's declarations, on August 3, 2015, Student filed a declaration of Student's mother; declaration of Student; declaration of Frank Guevara, resident manager for an apartment complex in San Rafael, California; and a joint declaration of Mr. and Mrs. C., parents of Student's girlfriend.

On August 14, 2015, City Schools' attorney, Jan E. Tomskey, wrote an e-mail to Student's attorney, Blanca Vaughan, stating in relevant part: "Given that [Student] is very close to graduation (expected to finish in October [2015]), we will set aside our past and present concerns regarding residency to allow him to finish his diploma program this Fall. We will also move forward to ensure full implementation of the settlement agreements executed in the spring"

¹ City Schools' opposition preceded Student's motion, because on July 16, 2015, it filed an opposition to Student's *sibling's* motion for stay put against City Schools on the ground that Student's sibling was not a resident of City Schools. City Schools correctly forecasted that Student's motion for stay put would involve the same dispute regarding Parent's residency.

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, 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

During the 2014-2015 regular school year, Student, age 18, attended the 12th grade at two high schools within the San Rafael High School District, which is governed by San Rafael City Schools. At the beginning of the school year, Student attended San Rafael High School, and subsequently transferred to Madrone High School, a continuation school, pursuant to the terms of the parties’ settlement agreement, dated March 23, 2015.² According to Student’s September 12, 2014 individualized education plan, Student was scheduled to graduate with a regular high school diploma on June 15, 2015. Student’s complaint alleges that he was unlawfully expelled from City Schools on June 12, 2015 and, therefore, has not completed his course of study to graduate from high school.

The March 23, 2015 settlement agreement provided that Student would be allowed to return to his prior placement at Madrone High School. A second settlement agreement, dated April 17, 2015, provided that City Schools would make available 30 minutes per week of general education counseling during the first quarter of the 2015-2016 school year.³ Student requested that his stay-put placement consist of the placement agreed upon in the March 23 and April 17, 2015 settlement agreements or at least the placement set forth in his last agreed upon and implemented IEP, dated September 12, 2014.

While City Schools initially opposed Student’s motion for stay put, it no longer opposes Student’s motion, as reflected in City Schools’ attorney Ms. Tomskey’s August 14, 2015 e-mail to Student’s attorney Ms. Vaughan. City Schools has offered to implement

² The March 23, 2015 settlement agreement resolved the expedited due process hearing in OAH Case No. 2015021034.

³ The April 17, 2015 settlement agreement resolved the unexpedited due process hearing in OAH Case No. 2015021034.

Student's stay-put placement pursuant to the terms of the parties' March 23 and April 17, 2015 settlement agreements, consistent with Student's request. Consequently, Student's motion is now moot and, therefore, Student's motion is denied.

ORDER

Student's motion for stay put is denied. Student may re-file the motion for stay put if City Schools fails to comply with its promise, as set forth in the August 14, 2015 e-mail.

IT IS SO ORDERED.

DATE: August 17, 2015

/s/

CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings