

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OCEANSIDE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015120015

ORDER DENYING MOTION FOR
STAY PUT

On December 4, 2015, Student filed a motion for stay put. Student did not provide a copy of the last agreed upon and implemented individualized education program. On December 9, 2015, District filed an opposition, which was supported by two declarations under penalty of perjury, and copies of Student's October 2014 IEP and 2015 amendments. On December 10, 2015, Student filed a response to District's opposition, which included a copy of Student's September 2015 IEP with several amendments, and additional exhibits. For the reasons discussed below, Student's motion is denied.

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, 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, subd. (a).)

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

DISCUSSION AND ORDER

Student's stay put motion seeks an order compelling District to provide after school transportation to "Together We Grow," an after school care facility that was once located within but has now moved to outside of District boundaries. Student offered a copy of a September 2015 IEP in her response to District's opposition. She argued that the September 2015 IEP is the last agreed upon and implemented IEP, and that it provides for transportation with a bus attendant, although the pick-up and drop-off points are not specified. Student further argues that the District's transportation details are specified in "transportation application" which is not part of the IEP document. The September 2015 IEP is not instructive for purposes of stay put because it, and Student's other exhibits, do not indicate that the IEP was ever consented to or implemented or that it incorporated anything from the transportation application as part of Student's IEP.

District contends that the last agreed upon and implemented IEP is Student's October 2014 IEP, which provides for "transportation" without further definition, but does not include transportation to Together We Grow. District further contends that it provided transportation to Together We Grow during the 2014-2015 school year while it was located within District's boundaries, as a courtesy to Parents. Finally, District argues that District is not obligated to transport Student to an after school program located outside of District boundaries, in particular because the transportation time would increase significantly.

Absent persuasive evidence from Student to the contrary, the October 2014 IEP is the last agreed upon and implemented IEP. The free appropriate public education offer includes a box checked "yes" for transportation. It does not identify pick up and drop off locations. The IEP does not expressly offer transportation to any after school program, regardless of location. None of the 2015 amendments to the October 2014 IEP include after school transportation as part of District's FAPE offer. Student's request for stay put consisting of transportation after school to Together We Grow is not supported by the October 2014 IEP. While the parties concede that District provided as a courtesy after school transportation to Together We Grow while it was located in the District, Student offered no credible evidence or authority supporting a finding that District's actions resulted in an amendment to the October 2014 IEP such that transportation after school to an out-of-district location would constitute stay put. Student's motion is denied.

IT IS SO ORDERED.

DATE: December 10, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings