

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ESCONDIDO UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2021070212

ORDER DENYING MOTION FOR STAY PUT

AUGUST 13, 2021

On August 9, 2021, Student filed a motion for stay put. On August 12, 2021, 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); Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the last agreed upon and implemented individualized educational program, called IEP, placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not become a student's "stay put" placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

DISCUSSION

Here, Student seeks an order determining that a temporary placement at a non-public school should be deemed a stay-put placement. Student's placement at Escondido Union School District's Bernardo Elementary School was agreed upon at the February 18, 2020 IEP and June 1, 2020 IEP amendment. At Student's December 4, 2020 IEP team meeting, Parents requested a trial period at a non-public school, and Escondido Union School District agreed to an observation. At the January 7, 2021 and January 15, 2021 IEP team meetings, the team agreed to a temporary 30-day placement at Foundations, the non-public school Parent requested. At the April 13, 2021 IEP team meeting, Student's progress at Foundations was discussed. Escondido Union School District believed their own program at the Structured Communication Social Behavioral Program was appropriate as Foundations' non-public school was a more restrictive placement. The April 13, 2021 IEP team meeting was continued to June 9, 2021 to reconvene and continue the diagnostic review. At the June 9, 2021 IEP team meeting, Escondido Union School District continued to offer their own Structured Communication Social Behavioral Program, but they also agreed to allow Student to complete his 2021 extended school year session at Foundations to help him transition back to its own program. However, the IEPs did not offer Foundations as a stay put placement.

Student did not meet his burden of establishing the temporary placement at Foundations was his stay put placement. The evidence established Foundations was offered as a temporary placement at the January 7, January 15, April 13, and June

9, 2021 IEP team meetings. Student's stay put placement is Escondido Union School District's public program at Bernardo Elementary, as delineated at the February 18 and June 1, 2020 IEP, signed by Parent. The motion for stay put is denied.

IT IS SO ORDERED.

Deborah Myers Cregar

Deborah Myers-Cregar

Administrative Law Judge

Office of Administrative Hearings