

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

PACIFICA SCHOOL DISTRICT.
OAH CASE NUMBER 2021080524

ORDER GRANTING MOTION FOR STAY PUT

AUGUST 23, 2021

On August 16, 2021, Student filed a motion for stay put. The Office of Administrative Hearings has not received an opposition from Pacifica School District.

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." 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).)

DISCUSSION

In the Spring of 2019, Student and Pacifica reached a settlement agreement in which the District agreed to fund Student's attendance at Sand Hill School, including reimbursement of transportation, from Summer 2019 through the extended school year of 2020. Parents agreed to waive potential claims related to the District's provision of a free appropriate public education, referred to as FAPE, through the first date of the 2020-21 school year. That agreement also provided that both Student's placement and transportation would be "stay put." The parties executed a second settlement agreement on June 25, 2020, which extended Student's placement at Sand Hill, including tuition and transportation reimbursement at public expense, through the extended school year of 2021. Parents again agreed to waive potential claims related to the District's provision of a FAPE, through the first date of the 2020-21 school year. The June 2020 agreement also provided that placement at Sand Hill would constitute "stay put," and that Pacifica would make a renewed FAPE offer for the 2021-2022 school year no later than May 30, 2021.

On April 7, 2021, counsel for Student contacted counsel for Pacifica to renew the current placement for Student at Sand Hill. The parties spent the next two and a half months negotiating an extension of the settlement agreement for the 2021-2022 school year at Sand Hill. Pacifica requested that the annual individualized educational plan meeting, referred to as an IEP, be extended to early June 2021 to allow Pacifica to assess Student. Parents agreed to this. The parties agreed on extending Student's placement at Sand Hill for the 2021-2022 school year and reimburse Parents for tuition and transportation, with Pacifica making a renewed FAPE offer for the 2022-2023 school year

and holding an IEP meeting in the spring of 2022. However, Pacifica would not agree that the renewed settlement would be considered "stay put." When no agreement was reached, Student filed a request for due process on August 16, 2021.

For purposes of stay put, the current educational placement is typically the last agreed upon and implemented IEP placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.). Student alleges that Pacifica still has not made a FAPE offer for the 2021-2022 school year, and there is no operative IEP other than the June 25, 2020 settlement agreement. Pacifica has not opposed the motion or submitted contrary evidence. As such, the last agreed upon and implemented placement was in the June 25, 2020 settlement agreement. The agreement provided Student would be placed at Sand Hill and Parents would be reimbursed for tuition and transportation. The parties agreed that this was "stay put." Student's motion is granted.

ORDER

Student shall continue to be placed at Sand Hill pursuant to the terms of the June 25, 2020 settlement agreement, including reimbursing Parents for tuition and transportation, pending the resolution of Student's due process request.

IT IS SO ORDERED.



Brian Krikorian

Administrative Law Judge

Office of Administrative Hearings