

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

DEL MAR UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2021120262

ORDER DENYING MOTION FOR STAY PUT

DECEMBER 14, 2021

On December 9, 2021, Student filed a motion for stay put. On December 13, 2021, District filed an opposition, an opposition on the ground that the stay put order sought is outside the jurisdiction of the Office of Administrative Hearings, called OAH.

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.)

Parents have the right to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education, called a FAPE, to such child. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has limited jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act and related California special education law. (See *Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

On December 6, 2021, Student filed a due process hearing request, called a complaint, naming Del Mar Union School District. The complaint alleges that Del Mar denied Student a FAPE by interfering with Parent's participation in Student's educational program by keeping her off of the school campus with a stay away letter dated November 18, 2021, and by then obtaining a temporary restraining order, called a TRO, from the California Superior Court on December 1, 2021. Student seeks a stay put order allowing her to escort her son on campus.

Student argues that Parent has driven Student to school every day since March 2020 and escorted Student to his classroom, and that these actions are part of Student's current educational program and should be allowed to continue as stay put, at least until the hearing on the TRO on December 22, 2021. Student's motion is not supported by a sworn declaration as to the facts and does not cite any authority permitting OAH to override a Superior Court order or to include Parent's access to the classroom as a part of stay put.

Del Mar's opposition is supported by a sworn declaration of its executive director of student services, establishing that a TRO was issued against Parent and requires her to stay 100 yards away from Student's school until the hearing on the TRO. It also establishes that Student's last consented-to IEP, dated September 23, 2019 and as amended, offers Student transportation to and from school. Although Parent sent Del Mar letters with exceptions to the IEP, Parent has not excepted consent to transportation in those letters.

Student's last agreed upon and implemented IEP provides Student with transportation between home and school. Although Parent may choose to drive Student instead, and has historically done so, that does not change the terms of the IEP for stay put purposes.

More importantly, OAH jurisdiction is limited to deciding whether a Student has received a FAPE. It has no authority to disregard a TRO issued by the Superior Court prohibiting Parent from entering school grounds.

Student's motion for stay put is denied.

IT IS SO ORDERED.

Alexa Hohensee

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Administrative Law Judge

Office of Administrative Hearings