

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2024060965

ORDER GRANTING MOTION FOR STAY PUT

JULY 23, 2024

On June 27, 2024, San Diego Unified School District filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Parent on behalf of Student as respondent.

On July 2, 2024, self-represented Parent, filed a letter requesting Stay Put for Student. On July 9, 2024, District filed a response to the motion. On July 10, 2024, OAH issued an order to Parent requiring additional evidence to support the requested stay put order. Parent filed the requested IEP on July 15, 2024. San Diego did not file any further response.

NO PREJUDICE RESULTING FROM DISPUTED SERVICE

San Diego's July 9, 2024 response to Student's stay put request, objected to improper service, as Student served a legal assistant in counsel's office as opposed to a "district representative." San Diego further asserted it did not agree to accept service via email. With those caveats, San Diego confirmed there was no dispute regarding Student's entitlement to services through a non-public school pending a final determination on San Diego's request for due process hearing.

San Diego acknowledged receipt on July 2, 2024, of the stay put request and identified no prejudice to San Diego. San Diego served its opposition to Parent via email. The general rule in both federal and state forums is that purely technical violations of procedures, resulting in no prejudice, are not grounds for relief. (See, 34 C.F.R. § 300.513(a)(2), [prohibiting IDEA hearing decisions to be based on solely technical violations of the IDEA; Ca Const., Art. 6 § 13. ["No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."].)

STAY PUT DETERMINATION

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.)

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). Emphasis added.) The Ninth Circuit Court of Appeals has recognized that the “then current educational placement refers to the educational setting in which the student is actually enrolled” at the time the due process hearing request is filed. (*E.E. v. Norris School District* (9th Cir. 2021) 4 F. 4th 866, 872.) “The stay put provision acts as a powerful protective measure to prevent disruption of the child’s education throughout the dispute process (*Joshua A. v. Rocklin Unified Sch. Dist.*, (9th Cir. 2009). 559 F.3d 1036, 1040 (9th Cir. 2009).

In this case, San Diego terminated a contract with the non-public school Student attended during the 2023-2024 school year. That school was New Bridge Academy. As part of its response to Student’s stay put request, San Diego submitted a prior written notice, dated June 27, 2024, addressed to Parent informing her of the contract termination. San Diego’s prior written notice also informed Parent that New Bridge was available to Student through the 2024 extended school year. The letter invited Parent to a meeting to discuss non-public school options for the 2024-2025 school year. No comparable non-public school placement was proposed.

An Administrative Law Judge lacks the legal authority to reinterpret the word “current” in state and federal stay put statutes to the word “future.” (*E.E. v. Norris, supra*, at p. 872.) The clear and mandatory statutory language requires that Student’s current placement be stay put. OAH does not have authority to order Student to accept an unspecified future non-public school placement as stay put. (*Ibid.*) Nor does the offer

to discuss an alternative non-public school on an unspecified date constitute a means of addressing Student's stay put placement.

Here, San Diego acknowledges that Student is entitled to stay put. San Diego did not file any documents challenging the IEP Student identified as the last agreed to and implemented IEP. That IEP, dated October 10, 2023, identifies New Bridge Academy as Student's then current non-public school placement.

San Diego provided no evidence that any legal determination required it to terminate its contract with New Bridge Academy. Nor did San Diego offer evidence that California's Department of Education had taken away New Bridge's non-public school certification, making contracting with New Bridge impossible. Finding a district's unilateral termination of a contract resulted in a means of changing Student's placement, would potentially void the stay put statutes as to non-public school placements in general. "The purpose of the "stay put" provision is to strip schools of the "unilateral authority they had traditionally employed to exclude disabled students ... from school" *Johnson ex rel. Johnson v. Special Educ. Hearing Office, State of Cal.* (9th Cir. 2002) 287 F. 3d. 1176, 1181.)

A comparison of Student's request for stay put and San Diego's reply establish that there is no dispute that Student is entitled to stay put. Therefore, Student's request for a stay put order is granted.

ORDER

1. Student's motion for Stay Put is granted.

2. Student's last agreed upon and implemented IEP dated October 10, 2023 provides for placement in a non-public school, specifically New Bridge Academy
3. Student's October 10, 2024 IEP also provides for:
 - a. 340 minutes per day of specialized academic instruction; and
 - b. 30 minutes per week of occupational therapy;
 - c. Extended school year services at New Bridge Academy, including 240 minutes per day of specialized academic instruction and 30 minutes per week of occupational therapy.
 - d. All accommodations listed as listed in the October 10, 2024 IEP.
 - e. Nothing in this order prevents Parent and San Diego from agreeing to an alternative non-public school placement as stay put pending the outcome of this dispute.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings