BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: EDUCATION RIGHTS HOLDER ON BEHALF OF STUDENT, v. SAN JUAN UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017100989 ORDER FOR SUPPLEMENTAL BRIEFING

PROCEDURAL HISTORY

Education Rights Holder on behalf of Student filed a request for due process with the Office of Administrative Hearings on October 19, 2017, naming San Juan Unified School District. Student raises two issues: 1) Whether District denied her a free appropriate public education by failing to convene an individualized education program team meeting for her; and 2) Whether District is currently responsible for providing Student with a FAPE. District filed a response to Student's complaint on October 30, 2017. District alleged that it is not the responsible for Student's education.

On October 25, 2017, Student filed a motion for stay put. She contends that her last agreed upon and implemented IEP is dated November 13, 2015. She contends that the IEP offers placement at a certified non-public school with related services. She contends that those placement and services constitute her stay put and that District must provide them to her because Educational Rights Holder, who is her parent for purposes of special education, resides within District's boundaries.

District filed an opposition to Student's motion on October 30, 2017. District contends that Student is not entitled to stay put because it would amount to a grant of summary judgment on the issue Student raised in her complaint that contends that District is responsible for providing Student with a FAPE, which District contends is not the case.

On October 31, 2017, Student filed a response to District's opposition. Student answers that adopting District's position would frustrate the purpose of the stay put provisions of the Individuals with Disabilities Education Act because it denies Student the right to a stay put placement.

APPLICABLE LAW

The purpose of the IDEA (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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 to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Due process hearing procedures for special education extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

In California, the determination of which agency is responsible to provide education to a particular student, is, in most instances, governed by residency requirements as set forth in sections 48200 and 48204 of the Education Code. The IDEA requires states to develop programs for ensuring that the mandates of the IDEA are met, and that children eligible for special education receive a FAPE. (20 U.S.C. § 1412 (a).) California law places the primary responsibility for providing special education to eligible children on the local educational agency, usually the school district in which the parents of the child reside. (Ed. Code, §§ 56300, 56340 [describing local educational agency responsibilities].) A parent includes a responsible adult appointed by a court who is authorized to make educational decisions for the child. (Ed Code, § 56028, subd. (a)(3).)

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

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

program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

DISCUSSION[2]

Student has just turned 17. She presently resides at Cinnamon Hills, a residential treatment center in Utah. Student has been eligible for special education since 2008. She has been a ward of the court since 2010. Parent was appointed as her education rights holder on April 15, 2014. Parent lives within the boundaries of District. In June 2015, the juvenile court placed Student at a licensed children's institution in Stockton, California. The North Valley Special Education Local Plan Area became responsible for developing an IEP for Student at that time.

North Valley developed an IEP for Student dated November 13, 2015. The IEP provided Student with placement in a certified non-public school with related services. North Valley implemented the IEP. In July 2016, the juvenile court placed Student in an out-of-state facility in Wyoming. The facility was not certified by California as a non-public school and did not meet the criteria as a licensed children's institution. The placement was not made through a school district or through the IEP process. In January 2017, the juvenile court placed Student at Cinnamon Hills, which is licensed by the California Department of Education. The placement was made by the court and was not made through the IEP process.

Student contends that her attorney contacted District's attorney in September 2017 to arrange for District to review and update Student's IEP. District responded that it did not believe it was responsible for Student's IEP.

Student has failed to provide sufficient supporting information in her motion for stay put or to address applicable law demonstrating that District is responsible for stay put under the circumstances of this case. At present, Student's status quo is a court-ordered placement at an out-of-state residential treatment center. She has not attended a non-public school since

[2] The factual background is based on Student's complaint; Student's motion for stay put and reply; and District's response to the complaint and its opposition to Student's stay put. However, neither party offered evidence of most of the facts asserted in their pleadings. Student's motion for stay put includes a declaration of her attorney, which addresses his attempts to have District convene an IEP team meeting for Student. The declaration also contains hearsay asserting that Cinnamon Hills, the residential treatment center where Student resides, is certified by the California Department of Education. Student's motion for stay put also includes a declaration of Parent attesting briefly to some of the facts in Student's complaint and other pleadings. However, neither party at this time disputes the factual background contained in the respective pleadings. Therefore, for purposes of this order regarding stay put only, those facts are accepted as true.

approximately July 2016, over a year ago. The purpose of stay put is to maintain the status quo pending determination of the issues presented in a student's complaint. Here, it appears that Student is asking for either of two things. First, that District should offer her a non-public school placement, with related services, pursuant to her November 2015 IEP. If that is the case, Student is asking to change her status quo from a court-ordered out-of-state residential placement to a non-public school placement in California. Student does not give any support for District being able to change a court-ordered placement.

In the alternative, Student may be asking for an order that District pay for the educational portion of Student's present placement. Student does not give support for District being responsible to do so where the court has ordered a placement, where it has not been shown that the placement was for educational purposes, where it appears no school district has determined that Student requires a residential placement for educational purposes, and where a residential placement is not the placement in the last agreed upon and implemented IEP.

Given the gaps in information in this case, Student is ordered to provide the following in supplemental briefing:

1. Copies of the court orders placing Student first at the treatment center in Wyoming in July 2016, and then at Cinnamon Hills in January 2017, along with any other pertinent documentation, including the basis for Student's need for residential placement. Student shall explain who is funding her placement at Cinnamon Hills and if the court has requested that Student pursue funding from a school district.

2. Any documentation or supporting declaration as to what attempts, if any, were made to have a school district take responsibility for Student's placement in Wyoming, including pertinent court orders and correspondence.

3. The applicability of Education Code sections 56167 and 56167.5 and Government Code Sections 7581 and 7579 to the instant situation where the court has ordered a residential placement rather than the placement being made through an IEP process.

4. Any case law or statutory support for Student's position that placement at Cinnamon Hills is Student's stay put.

Student shall file the supplemental briefing no later than 5 p.m. on Thursday, November 9, 2017. Student's supplemental briefing shall not exceed 15 pages.

District may file a response to Student's supplemental briefing no later than 5:00 p.m. on Wednesday, November 15, 2017. District's response shall not exceed 10 pages.

IT IS SO ORDERED

DATE: November 2, 2017

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings