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 2025080841

ORDER DENYING MOTION FOR STAY PUT

AUGUST 22, 2025

On August 19, 2025, Student filed with the Office of Administrative Hearings, OAH, a motion for stay put. The motion is supported by Parent's sworn declaration. On August 21, 2025, San Diego Unified School District filed an opposition with two supporting sworn declarations.

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.)

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).)

STUDENT IS NOT ENTITLED TO STAY PUT

Here, there is no dispute that Student has not been found eligible for special education and related services. Because Student has not been determined eligible for an individualized education program, Student is not entitled to stay put protections.

Parent argues that San Diego had reason to suspect that Student had a disability because of Parent's written requests for special education evaluations. As such, it is Parent's position that San Diego's failure to evaluate Student cannot strip Student of her protections under the Individuals with Disabilities Education Act, including stay put protections. The law does not support Parent's position. For a student who has not yet been determined eligible for special education, stay put protections apply only if the student engaged in behavior that violated a code of school conduct resulting in disciplinary proceedings, and the district had a basis of knowledge that the student had a disability before the behavior prompting the disciplinary action occurred. (20 U.S.C. § 1415(k)(5)(B).) Student's complaint does not allege any violations of Student's disciplinary rights. The motion for stay put is denied.

ALL FILINGS MUST INCLUDE A PROOF OF SERVICE

Parent filed a request for due process hearing, called a complaint, with OAH on August 19, 2025. Student's complaint does not include a proof of service establishing that Parent provided San Diego a copy of the complaint. Similarly, the motion for stay put does not include a proof of service. OAH requires that all filed documents include a proof of service, indicating when and by what means the other party received a copy of the document filed with OAH. If Parent wants OAH to consider any future filing, it must be accompanied by a proof of service. The parties may use the sample proof of service form found on OAH's website.

ORDER

1. Student's motion for stay put is denied.

2. All of Parent's requested remedies are denied.

3. This matter shall proceed as calendared.

IT IS SO ORDERED.

Theresa Ravandi

Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings