BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

DINUBA UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2023010036

OAH CASE NUMBER 2022110334

ORDER DENYING MOTION FOR STAY PUT

JANUARY 25, 2023

On November 9, 2022, Dinuba Unified School District filed with the Office of Administrative Hearings, called OAH, a request for due process hearing, called a complaint, naming Student.

On January 3, 2023, Father, on behalf of Student, filed a complaint with OAH, naming Dinuba. On January 13, 2023, the OAH granted the parties' motion to consolidate the two matters.

On January 6, 2023, Student filed a motion for stay put, contending that Dinuba should continue to implement Student's May 19, 2020 individualized education program, called an IEP. On January 13, 2023, Dinuba filed an opposition on the ground

that Student became a general education child when Mother signed consent to the June 1, 2022 IEP, which exited Student from special education.

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

Nothing in the IDEA or State special education law requires both parents to agree that a due process hearing be filed or even that an IEP be implemented. In cases of disagreement between married parents of a special needs child, either may refuse consent to an IEP while the other provides consent. Similarly, either parent may file a request for due process contending the school district failed to offer a FAPE, while the other may choose not to participate in the hearing. The same is true for divorced parents with joint legal custody where educational rights have not been granted to only one parent. Each parent has an independent enforceable right to bring a complaint under the IDEA to challenge a school district's provision of FAPE to a student. (*Winkleman v Parma City School Dist*. (2007) 550 U.S. 516, 533, 127 S.Ct. 1994; *see also Blanchard v Morton School Dist*. (9th Cir. 2007) 509 F.3d 934, 936.)

Here, Father supported Student's motion for stay put with a declaration stating that Father and Mother share joint legal custody of Student. Father did not provide a court order that empowers him with sole decision making authority regarding Student's education. According, either Parent may consent to an IEP and either Parent may request a due process hearing regarding Student's IEPs.

Student's motion alleges the May 19, 2020 IEP is the last agreed upon and implemented IEP. However, Student has not provided a consent page for that IEP. In a reply brief, Student provided signatures on a participant form, but the boxes for marking consent to the IEP are not checked and neither Parent's signature appears on the consent portion of the form.

Dinuba contends that Mother consented to the June 1, 2022 IEP, which exited Student from special education. If this is true, then Student had been a general education child before either party filed their respective complaints. As such, he would not be entitled to stay put in a special education with related services.

Student does not contest that Mother signed consent to exit Student from special education. However, Dinuba has not submitted a copy of the June 1, 2021 IEP or consent form.

Student, having the burden of proving his motion, has not provided evidence supporting his contention that he is entitled to stay put under the May 19, 2020 IEP. Accordingly, OAH orders the following:

The motion for stay put is denied, without prejudice.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings