BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FREMONT UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017041172 ORDER DENYING MOTION FOR STAY PUT AND MOTION FOR ESTABLISHING AN ANNUAL INDIVIDUALIZED EDUCATION PROGRAM MEETING DATE

On May 4, 2017, Student filed a motion asking that an annual individualized education program meeting date be established and asking for "stay put." Fremont Unified School District filed an opposition the motion on May 9, 2017.

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 placement called for in the student's individualized education program, which has been implemented 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).)

A school district is obligated to have an annual IEP meeting for a student, and to have an IEP in place for a student at the beginning of the school year. (*Anchorage School Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1055-1056; 20 U.S.C. § 1414(d)(2)(A), (4)(A); 34 C.F.R. §§ 300.323(a), 300.324(b)(1).

DISCUSSION

In her motion, Student is seeking to have the IEP process halted due to ongoing matters pending before OAH. On May 8, 2017, a due process hearing conducted by this ALJ concluded in a Fremont-filed case concerning Student, OAH Case No. 2017021203. Student filed a similar stay put motion in that case which was denied on the record on May 8, 2017. Student filed the instant case on April 27, 2017, and filed the stay put motion and the motion to establish an annual IEP date in this case on May 4, 2017.

Student became eligible for special education on May 29, 2014, at an IEP team meeting held on that date. Therefore, her annual IEP team meeting needs to be scheduled before May 29, 2017. This is especially true since the IEP team needs to determine what her educational placement will be for the 2017-2018 school year. The educational placement which is referred to in a motion for stay put is not the holding of an IEP team meeting. OAH does not have authority to stop a school district from scheduling an annual IEP team meeting, and the school district has a legal obligation to hold at least one such annual meeting. This is true even if there are ongoing proceedings before OAH. Accordingly, Student's request for establishing an annual IEP team meeting date, and for "stay put" is denied.

ORDER

1. Student's motion for an order establishing an annual IEP team meeting date is denied.

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

DATE: May 10, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings