BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SAN MATEO UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2014110223 ORDER DENYING MOTION FOR STAY PUT

On November 15, 2014, Student filed a motion for stay put. On November 20, 2014, the San Mateo Union High School District filed an opposition.

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.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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.)

DISCUSSION

Student is a 17-year-old who attended an out-of-state residential placement. According to Student's due process hearing request (complaint), Student returned to a public school placement during the summer of 2014. Student's complaint states that Student needs only five English credits in order to graduate with a high school diploma.

Student's IEP team met on August 11, 2014.[1] According to Student's complaint, the team offered placement at Aragon High School for three classes per day and one period of directed studies.

Student's parents signed their agreement to the IEP offer with the following comment: "Parents consent to placement at Aragon High School with reservation of rights to assert stay put at parents' election through diploma."

According to Student's complaint, another IEP team meeting was held on September 9, 2014, at which time the IEP team once again offered Aragon High School as a placement. Student did not attach a copy of a September 9 IEP to the stay put papers, and it is not clear what was offered or accepted that day.

On October 10, 2014, the San Mateo County Superior Court issued mutual restraining orders between Student and another pupil. Each of the restraining orders specifically stated: "This order does not preclude attending and being on campus at Aragon High School."

According to San Mateo's opposition papers, Student had a conflict with a pupil at Aragon High School that led to police intervention. It is not clear from the papers whether this pupil conflict involved the same pupil as the restraining orders or a different pupil.

On October 20, 2014, the parties held a meeting. Student did not attach to the moving papers a copy of any documentation related to that meeting, but according to Student's complaint, there was an "informal agreement" as a result of that meeting. Student's complaint describes the result of that meeting as follows:

> At the end of October, 2014, an informal agreement was reached for Student to attend his home high school . . . for 1 period per day to complete his English requirement. This agreement was not pursuant to a signed IEP.

San Mateo's opposition papers describe this meeting as an emergency IEP team meeting. According to San Mateo, the team agreed that Student would complete his final five credits of English through one-to-one home/hospital instruction. San Mateo contends that Student's parents refused to allow the instruction to take place in their home, so the IEP team agreed that he would receive the one-to-one instruction at the library of his home school. However, it is not clear from San Mateo's papers whether a formal, IEP amendment

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[1] Apparently there was also an IEP team meeting held on July 30, 2014, but Student attached only selected pages from that document to his moving papers. It is unclear whether Student attached the entire August 11, 2014 IEP document to the moving papers, but both parties agree that the August 2014 IEP offered Student a placement at Aragon High School, so it is possible to rule on the motion despite Student's evidentiary omissions.

was signed. It is also unclear whether this was intended to be a permanent IEP placement change or just a temporary measure.

The parties apparently had a dispute about the parameters of the home/hospital instruction. Student filed for a due process hearing and brought this motion for stay put. In his stay put motion, Student seeks to have San Mateo implement the IEP offer of August 11, 2014, at Student's home school instead of Aragon High School. Student contends that this is necessary because of transportation problems and because of the mutual restraining orders involving the other pupil who attends Aragon High School.

San Mateo objects to Student's motion, because the home school is not the last agreed-upon and implemented IEP placement for Student. San Mateo contends that the IEP team specifically rejected Student's home school as a placement during the August IEP team meeting. According to San Mateo's opposition papers, there are serious behavioral issues with Student that prevent his home school from being a proper placement.[2]

Student has not filed sufficient evidence to show that he should be placed at his home school for purposes of stay put. The August 2014 IEP that Student claims is the last agreed upon and implemented IEP did not call for Student to attend his home school. Instead, it called for Student to attend Aragon High School. Likewise, the "informal agreement" in October 2014 did not call for Student to attend classes at his home school -- it called for Student to receive home/hospital instruction in the school library.

The purpose of stay put is to maintain the status quo pending a hearing, and to prevent a school district from unilaterally changing a pupil's placement before a hearing can be held.

In the instant case, Student does not want to maintain the status quo. Instead Student appears to be requesting a change of placement under the August 2014 IEP from Aragon to his home school. That is not appropriate relief for a stay put motion.

It is not clear from the paperwork Student submitted whether the last agreed upon and implemented IEP placement is at Aragon or is one-to-one, home/hospital instruction. However, either way, the last agreed-upon placement was not for Student to take classes at his home school.

[2] It is not necessary to describe those behavioral issues for purposes of this stay put motion, because the only concern of a stay put motion is maintaining the status quo until a due process hearing can be held. The critical issue is what the IEP team agreed upon, not why the team made that choice.

ORDER

Student's motion for stay put is denied.

DATE: November 25, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings