BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT .	OAH Case No. 2018110279 ORDER DENYING MOTION FOR STAY PUT

On October 31, 2018, Student filed a request for due process hearing naming Long Beach Unified School District as respondent. Student also filed a motion for stay put on that same day, asserting that Student should be provided with transportation services to his new middle school as he was provided with transportation during his elementary school years. On November 13, 2018, Long Beach filed an opposition to Student's motion for Stay Put.

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

DISCUSSION

Student asserts that the last "fully agreed upon and implemented IEP" was the one dated January 7, 2015. However, Student has attached a series of IEP offers to his motion which are dated after January 7, 2018, the most recent of which is the IEP dated October 10, 2018. In that IEP, transportation is not offered. The failure to offer transportation is one of the issues in Student's complaint. However, Stay Put is based on the last agreed upon and implemented IEP offer. The October 10, 2018 IEP has the words "I consent to this IEP Except" circled and Parents have signed the document. While the failure to provide transportation services is at issue in this case, there is no indication that Student has a right to

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

a continuation of transportation services based on the October 10, 2018 IEP as that IEP specifically did not offer transportation. A review of Student's other, prior IEPs indicates that the October 24, 2017 IEP did not offer transportation, and Parents objected; and the October 31, 2016 IEP also did not offer transportation and Parents noted their objection.

Student has not established a basis upon which Stay Put as to transportation can be ordered. While transportation is an issue to be determined in the due process hearing, that fact does not automatically entitle Student to disputed services that were not offered pending the outcome of the hearing.

ORDER

1. Student's request for Stay Put as to transportation is DENIED.

2. The case shall proceed as stated in the November 8, 2018 scheduling order.

IT IS SO ORDERED.

DATE: November 13, 2018

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings