BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018100703
v.	ORDER DENYING MOTION FOR STAY PUT
SPRINGS CHARTER SCHOOLS.	

On February 8, 2019, Student filed a motion for stay put. On February 13, 2019, Springs Charter filed an opposition. Student filed a reply to the opposition on February 14, 2019.

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.) 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).)

DISCUSSION

An Order of Stay Put allows a student to remain in his last agreed-upon and implemented placement while a dispute is pending. Here, Student has no agreed-upon placement because Student has never been found eligible for special education services. Springs Charter has not proposed to change the package of "facilities, personnel, location or equipment" and accompanying supports and services designed to meet Student's exceptional needs. There is no last agreed-upon placement at which Student could be retained.

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

Student raises two issues in his motion. First, he asserts that Springs Charter has threatened to dismiss Student from its program because Parent failed to attend required meetings with a teacher. Student has not included any documentation of this with the motion, and relies entirely upon her declaration. In response to the motion, Springs Charter has documented that Student is enrolled in a homeschooling program that requires regular check-in with a teacher, and has provided a Student Agreement setting out that requirement. Student is not seeking stay put to protect his rights to special education services during the pendency of a dispute over services or eligibility. As Student has not been found eligible for special education services, Student has failed to establish how Student would be eligible for stay put protection.

Secondly, Student asserts that Springs Charter is seeking to expel him "without due process," possibly implying that the expulsion is retaliatory for having filed for due process. The only explanation provided by Parent for the action is the statement in her declaration that this was done "[o]nly now that I have opposed the bad behavior of Springs" Charter. Again, Student has not provided any documentation of this claim. Springs Charter responded that it was reacting to a request from the Garden Grove School District to release Student to enroll him at Garden Grove. Student cannot be concurrently enrolled at Springs Charter and another school district. If Parent is seeking to enroll Student in another school district, he cannot also be retained at Springs Charter.

Stay put is available to students not currently eligible for special education services if they previously had been eligible. If a school has reclassified a student as ineligible for special education services, that student may employ stay put to retain the placement, services, and supports that had been provided. Student has had no IEP plan, and has no special education placement in which he can be retained. In addition, there is no contention that Springs Charter is seeking to expel Student for conduct that is a manifestation of a disability. Accordingly, stay put is denied.

IT IS SO ORDERED.

DATE: February 22, 2019

DocuSigned by:
Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings