BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. PAJARO VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014110423 ORDER DENYING MOTION FOR STAY PUT

On November 14, 2014, Student filed a motion for stay put. Pajaro Valley Unified School District filed an opposition to the motion.

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.)

DISCUSSION

Student requests stay put based on a decision in a prior Office of Administrative Hearings case involving these parties, *Parents on Behalf of Student v. Pajaro Valley Unified School District* (2014) OAH case number 2013090347. In that case, the OAH decision found that Pajaro had committed procedural errors that prevented Student's parents from participating in the IEP process from January 17, 2014, to May 26, 2014. In particular, Pajaro failed to hold a timely IEP team meeting and failed to have a general education teacher present during an IEP team meeting. Those procedural errors gave rise to a denial of a free appropriate public education during that time.

The decision ordered Pajaro to reimburse Student's parents for four and one-half months of tuition and transportation costs that they paid for a non-public school for Student during the time that Student was denied a FAPE. The decision did not find any denial of FAPE with respect to the placement and services in the various IEP offers, nor did the

decision place Student at the non-public school prospectively. The reimbursement was restricted to the four and one-half month period in which the procedural violations occurred.

Student has now filed the instant case challenging the appropriateness of the May 27, 2014 IEP offer. Student contends that, based on the prior OAH decision, the non-public school placement has become stay put for Student, and Pajaro must continue to reimburse Student's parents for their tuition and transportation costs as ordered in the OAH decision.

Pajaro disagrees. Pajaro contends that the OAH decision did not change Student's placement. Pajaro believes that Student's stay put still consists of the placement and services called for in the last agreed-upon and implemented IEP.

Pajaro is correct. Nothing in the OAH decision was intended to, nor did it in fact, change Student's placement. The decision simply ordered reimbursement for a limited period of time in which there were procedural errors by Pajaro.

Student relies upon the case of *Clovis v. Office of Administrative Hearings* (9th Cir. 1990) 903 F.2d 635 (*Clovis*), but that case is distinguishable. In *Clovis*, the administrative decision found that the parents' preferred placement was the appropriate placement instead of the placement recommended by the school district. The school district was ordered to fund the parents' chosen placement prospectively. The United States District Court upheld that decision. While the appeal of the case was pending, the child remained in the court-ordered placement.

In the instant case, on the other hand, OAH has never ruled that the non-public school placement preferred by the parents was the appropriate placement instead of Pajaro's proposed placement. The order for reimbursement was made solely because of procedural errors unrelated to the appropriateness of the proposed placement. (See *L.M. v. Capistrano Unified School District* (9th Cir. 2009) 556 F.3d 900 [reimbursement ordered for procedural error did not create stay put placement].)

ORDER

Student's motion is denied.

DATE: November 20, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings