**BEFORE THE**
**OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF CALIFORNIA**

# IN THE MATTER OF:

# PARENT ON BEHALF OF STUDENT,

# v.

# OAKLEY UNION ELEMENTARY SCHOOL DISTRICT AND CALIFORNIA SCHOOL FOR THE DEAF, FREMONT.

# OAH CASE NUMBER 2019090085

## ORDER GRANTING MOTION FOR STAY PUT

On September 4, 2019, Student filed a motion for stay put. On September 5, 2019, California School for the Deaf filed a response, arguing Student's stay put placement is the California School for the Deaf; however, Oakley Union is responsible for providing nursing services for Student. On September 6, 2019, Oakley Union responded, arguing California School for the Deaf is the proper stay put placement and Oakley Union has no continuing obligation to provide nursing services for Student.

## 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 last agreed upon and implemented individualized educational program, called IEP, placement 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

Student was placed at the California School for the Deaf, Fremont on June 7, 2018 via an IEP developed jointly between Oakley and California School for the Deaf. California School for the Deaf agreed to provide all services except for nursing. Nursing services were to be provided by a contract from Oakley Union. Parents consented to the IEP on June 7, 2018. For Student's June 5, 2019 IEP, California School for the Deaf was offered as placement and agreed to provide all services with the exception of nursing. Parent signed the IEP on June 5, 2019; however, specifically excluded agreeing to the offered nursing services.

The last agreed upon and implemented IEP for placement and all services, excluding nursing services, is the California School for the Deaf. Student is entitled to remain in a placement provided by the California School for the Deaf. Since Parents explicitly did not consent to nursing services on the June 5, 2019 IEP, the last consented to and implemented IEP for nursing purposes is the June 7, 2018 IEP, which designates Oakley Union as the responsible party for nursing services. Thus, for the pendency of this action, Student's stay put placement and related services are to be provided

through California School for the Deaf, except for nursing services which are to be provided by Oakley Union.

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## ORDER

1. California School for the Deaf is Student's stay put placement.

2. Oakley Union will provide Student's nursing services.

## IT IS SO ORDERED.

DATED: September 12, 2019

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Tiffany Gilmartin
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Tiffany Gilmartin
Administrative Law Judge
Office of Administrative Hearings