BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: OAKLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013040377 ORDER DENYING MOTION FOR STAY PUT WITHOUT PREJUDICE

On July 23, 2013 Student filed a motion for stay put. On July 25, 2013, District filed an opposition on the grounds that Student is not entitled to stay put on a District filed case, and that Student failed to submit evidence upon penalty of perjury of the Student's last agreed upon placement. On July 26, 2013, Student filed a declaration to the Stay Put Motion. On July 29, 2013, District filed its reply to the Stay Put Motion.

APPLICABLE LAW

Under federal and state special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. 300.518 (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School District* (5th Cir. 1983) 695 F.2d 949, 953; *Zvi D. v. Gordon Ambach* (2d Cir. 1982) 694 F.2d 904.)

For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), 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, "special educational placement means 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

District's assertion that Student needs to file a complaint to invoke stay put is unsupported and misplaced. As specifically provided by 34 C.F.R. 300.518, stay put applies

during the pendency of "*any*" administrative proceedings and provides no carve out exempting District filings.

Student is entitled to remain in his last agreed upon and implemented placement while a dispute is pending and an order for stay put is generally not required unless a dispute over placement exists. Here, Student referenced the September 15, 2011 IEP and stated that the Applied Behavioral Analysis (ABA) services provided therein were essential and removal of such had not been agreed upon, but did not provide a copy of the September 15, 2011 IEP or evidence that such ABA services were part of the last agreed to IEP placement. Student also represented that the June 4, 2013 Addendum to the IEP (Addendum) is the last agreed upon IEP. However, the evidence does not support that District was presented with the Addendum before the filing of the Stay Put Motion or ever agreed to parent's Addendum. It is unclear which, if any, of the placement and services in the September 15, 2011 or the June 4, 2013 IEP were agreed to by the Student and implemented by District prior to this dispute arising.

While Student has alleged a dispute exists as to Student's placement and services while the District's due process hearing request is pending, Student did not provide sufficient evidence as to the last agreed upon *and* implemented placement and services. Student may file a request for stay put with more specificity as to the nature of the dispute and the terms of stay put. The motion for stay put is denied without prejudice.

ORDER

1. Student's Motion for Stay Put is denied without prejudice.

2. Student may file a request for stay put specifying the exact placement and services last agreed to and implemented by the District. Specifically, any further stay put motion filed by Student must include complete copies, including signature pages showing parental consent, of the IEP or IEP's Student contends are the stay put placement.

Dated: July 29, 2013

/s/
SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings