BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018100978
v.	ORDER DENYING MOTION FOR STAY PUT
POWAY UNIFIED SCHOOL DISTRICT.	

On October 19, 2018, Student filed a request for due process hearing (complaint) naming Poway Unified School District as respondent. On October 24, 2018, Student filed an amended complaint and motion for stay put. That same day, Poway, filed an opposition to Student's Stay Put motion

Student's motion for Stay Put at Excelsior Academy was based on the assertion that the last implemented individualized education program was not the last agreed upon IEP. Student asserts that Mother relied on misrepresentations from Poway staff that Student's then-current placement was closing in consenting to send Student to Sierra Academy. Student further asserts that Poway staff fraudulently changed the IEP notes to indicate team agreement to a change of placement for Student after only a quick discussion in the parking lot between Mother and Student's case manager following the May 30, 2018 IEP team meeting. Poway opposes the motion on the ground that Student's motion seeks "stay put" in a placement in which he is no longer enrolled and which is not the placement identified in the last agreed upon and implemented IEP.

The moving papers acknowledge that Mother signed the May 30, 2018 IEP on June 15, 2018. Student began attending Sierra Academy for the extended school year program during the summer of 2018. Student's request for due process states that Student continues to attend Sierra Academy.

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." In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment

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

necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

The IDEA does not define then current educational placement." However, generally, the phrase refers to the educational setting in which the Student is actually enrolled at the time the parents request a due process hearing to challenge a proposed change in the child's educational placement. (*N.E. by and through C.E. and P.E. v. Seattle School District* (9th Cir. 2016) 842 F. 3d 1093, 1097.) This is most often interpreted as being the placement set forth in the child's last implemented IEP. (*Ibid*.)

Here, Student asserts, without evidence, that the last IEP in place is not the last consented-to IEP and thus Student's placement at Sierra Academy should not constitute "stay put." Rather, Student argues, Student should be ordered back to Excelsior Academy, the placement he prefers. [2]

However, Stay put is intended to maintain the status quo pending completion of Student's challenge to his placement or any other issues raised in the request for due process hearing. (*Ibid*) Student currently attends Sierra Academy. Student has failed to provide authority for the proposition that Student is able to claim "stay put" at a school he no longer attends. The motion for "stay put" to require Student to be allowed to attend Excelsior Academy is denied.

IT IS SO ORDERED.

DATE: October 26, 2018

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

[2] Student fails to attach the May 30, 2018 IEP in an effort to avoid subjecting it to scrutiny. Instead, he attaches the February 2017 and February 2018 IEPs. This failure to provide evidence of the most recent IEP would be grounds for denying this motion on its own.