BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

UKIAH UNIFIED SCHOOL DISTRICT AND

HEALDSBURG UNIFIED SCHOOL DISTRICT

OAH CASE NUMBER 2021040310

ORDER GRANTING MOTION FOR STAY PUT

APRIL 21, 2021

On April 6, 2021, Student filed a motion for stay put. On April 9, 2021, Healdsburg Unified School District and Ukiah Unified School District filed an opposition on the grounds that (1) the request for stay put is a request for a change in placement and (2) Student is attempting to resolve a factual dispute through the stay put process.

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 is subject to child custody proceedings between her parents. As of December 6, 2018, the parties shared joint legal and physical custody of Student. Mother contends she was awarded final determination for educationally related matters in the superior court order. Prior to March 13, 2020, Student resided with Father within the boundaries of Healdsburg Unified School District. Both Parents consented the Student's IEP developed by Healdsburg Unified on October 3, 2019 and amended on November 19, 2019, hereafter called the November 19, 2019 IEP.

On January 14, 2020, Father consented to another amendment to the November 19, 2019 IEP which changed Student's placement to New Directions, a non-public school. Healdsburg Unified notified Mother of this change in placement. Motherdid not consent to Student's placement at New Directions. Whether Student's IEP was ever implemented at New Directions between January 2020 and March 2020, remains disputed between the parties. Healdsburg Unified and Ukiah Unified contend this is Student's operative IEP. Mother contends that without her consent pursuant the child custody order, Father's consent to placement at New Directions was void.

On March 20, 2020, Mother obtained a temporary emergency order of child custody which provided her with sole legal custody of Student, and which required Student's physical placement in a residential treatment facility. This was a unilateral placement made pursuant to a superior court order and was not part of Student's IEP. On March 27, 2020, Student was taken to an interim educational wilderness program. In June 2020, Student was placed in a residential program at Solstice East Timberlake, an affiliate of Solstice West, a California certified non-public school.

In August 2020, Mother enrolled Student in Ukiah Unified for the 2020-2021 school year, based upon Mother's residency. On August 14, 2020, Healdsburg Unified forwarded Student's educational records to Ukiah Unified. The IEP documents from Healdsburg indicated Student's placement in a non-public school pursuant to the January 14, 2020 IEP. Ukiah Unified however, was aware of Student's placement in a residential treatment center and was further aware of Student's transfer to Alpine Academy's residential treatment facility on October 20, 2020, where Student remains placed today. Ukiah Unified convened five IEP team meetings between October 6, 2020 and February 11, 2021 before it provided Mother with a written offer of FAPE which included an offer of placement in a non-residential non-public school, the same as had been offered by Healdsburg Unified on January 14, 2020. Mother did not consent to the placement.

Healdsburg Unified and Ukiah Unified contentions that the granting of a stay put constitutes a prehearing determination of factual contentions at issue in Student's complaint is without merit. No such determinations regarding the validity of the various IEP documents or the superior court child custody orders are required in this matter to determine Student's stay put placement. Nor is there is requirement that OAH make a

factual determination of Student's last implemented IEP to determine Student's stay put placement.

The IDEA uses the phrase "current educational placement," which is generally interpreted to mean the placement set forth in the child's last implemented IEP (*L.M. v. Capistrano Unified Sch. Dist*. (9th Cir. 2009) 556 F.3d. 900, 902.) The function of a stay put injunction is to allow a student who has requested educational administrative due process hearing, to remain in their educational placement regardless of the strength of their case or likelihood the student will be harmed by a change in placement. The primary purpose of stay put is to protect students from changes to their educational programs when there is a dispute over the lawfulness of the changes. (*A.D. ex rel. A.D. v. Hawaii Dep't. of Educ.* (9th Cir. 2013) 727 F.3d 911, 914.) Using this standard, Student's current placement is a residential treatment facility. The residential treatment placement, however, was unilaterally obtained by Mother pursuant to a superior court order. Neither school district was involved in the residential treatment placement nor was there any determination of educational appropriateness for such placement.

Nevertheless, it has remained Student's placement for over one year. If a dispute arises before an IEP is implemented, the current educational placement is the operative placement under which the child is actually receiving instruction at the time the dispute arises. *(See Thomas v. Cincinnati Bd. Of Educ.* (6th Cir. 1990) 918,F2d 618.) Thusly, Student's stay put placement points toward Alpine Academy.

Student's argument regarding implied consent to the residential placement is persuasive. Student's reliance on *Sam K. ex rel. Diane C. v. Hawaii Dept. of Educ.* (9th Cir. 2015) 788 F.3d1033.) parallels the case at hand. Both involved unilaterally placed students, in which the local educational agency was aware of the placements at the beginning of the school year yet waited until the following January to make a formal

offer of placement. The Ninth Circuit found that the Hawaii Department of Education had not proposed anything else, and "presumably it did not intend that the student would receive no educational services in the meantime." In those circumstances, it did not appear that the private placement for the school year was "without consent or agreement (of the Department of Education). (*Id. Sam K.* at p. 1039.) Similarly, Ukiah Unified knew Student was placed in a residential treatment facility yet waited approximately five months before it made an offer of placement. As with *Sam K.,* such delay constitutes tacit agreement or implied consent to Student's unilateral placement. Finally, the placement by the superior court did not relieve Ukiah Unified of its independent duty to hold an IEP team meeting and make a complete IEP offer. (*M.S. by and through R.H. v. Los Angeles Unified School Dist.* (9th Cir. 2019) 913 F.3d 1119, 1135–1138.); *B.H. v. Manhattan Beach Unified School Dist.* (2019) 35 Cal.App.5th 563, 582-583.) Therefore, Student's placement at Alpine Academy constitutes Student's most recently implemented placement for purposed of stay put. Student's request for stay put is granted.

ORDER

Student's request for stay put is granted. Alpine Academy, a California Certified Nonpublic School and Residential Treatment Center is Student's last agree-upon and implemented educational placement.

Ukiah Unified School District is ordered to fund Student's placement as stay put under 20 United States Code. § 1415(j) and Education Code, section 56505, subdivision (d), pending the outcome of Student's Request for Due Process Hearing complaint filed on April 6, 2021.

IT IS SO ORDERED.

Judith Pasewark

Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings