BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BERKELEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018100524 ORDER DENYING MOTION FOR STAY PUT

On October 8, 2018, Student filed a request for due process hearing (complaint) naming Berkeley Unified School District. On October 10, 2018, Student filed a motion for stay put. On October 12, 2018, Berkeley Unified filed an opposition. On October 16, 2018: Student filed a response to Berkeley Unified's opposition; Berkeley Unified filed a "surreply" to Student's response; and Student filed a reply to Berkeley Unified's "surreply."

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." 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.)

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's motion for stay put was supported by a declaration under penalty of perjury from Student's attorney, accompanied by an incomplete copy of Student's November 7, 2017 individualized education program as amended on April 12, 2018, a doctor's letter, and a letter from Berkeley Unified to Mother. Berkeley Unified's opposition was supported by

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

three declarations under penalty of perjury from its administrative staff, a full copy of the November 7, 2017 IEP as amended on April 12, 2018, applications to Antioch Unified School District for interdistrict transfers to Berkeley Unified for the 2016-2017, 2017-2018, and 2018-2019 school years, with related documents, and various policies relating to interdistrict transfers.

At issue in this motion is whether Student, whom Student's counsel alleges is homeless, has a legal residential address within Berkeley Unified such that Berkeley Unified is legally obligated to provide stay put based upon the April 12, 2018 IEP amendment, pending the outcome of this due process matter. Student's attorney argues without evidentiary support that Student is homeless, lives alternately with various friends or relatives, and Mother's post office box address in Berkeley establishes her residence within Berkeley Unified's boundaries. Student's copy of the IEP includes next to a typewritten Antioch address a handwritten address identifying a post office box in Berkeley, California. That handwriting was not authenticated.

Berkeley Unified contends it is not the local educational agency responsible to provide stay put for Student. It argues Student attended its school district programs under an interdistrict transfer permit with Antioch, which Berkeley declined to renew for the 2018-2019 school year because it had no placement to serve Student's needs. The copy of the IEP offered by Berkeley Unified does not include the handwritten address and identifies Student's address as being in Antioch, California.

Student did not provide sufficient evidence to support a finding that Student is entitled to stay put pending the outcome of this case, at Berkeley Unified's expense. First, Student did not provide a complete copy of the last agreed upon and implemented IEP, which is required to determine what the appropriate stay put would be, if applicable. Second, Student offered no authenticated evidence that he is a resident of Berkeley Unified such that the school district would be obligated to provide stay put.

Student's motion for stay put is denied without prejudice to filing a complete and authenticated copy of Student's most recent implemented IEP, with supporting legal authorities and authenticated evidence to establish his right to stay put funded by Berkeley Unified.

IT IS SO ORDERED.

DATE: October 24, 2018

DocuSigned by:
Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings