BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017010439
v.	ORDER DENYING MOTION FOR STAY PUT
CLOVIS UNIFIED SCHOOL DISTRICT.	

On January 13, 2017, Student filed a request for due process with the Office of Administrative Hearings, naming Clovis Unified School District. Student also filed a motion for stay put[1]. On January 19, 2017, District filed opposition to the stay put motion.

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 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).)

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old IEP as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, 20 U.S.C. § 1414(d)(1)(B).)

[1] Student provided OAH with the stay put motion on January 10, 2017. The motion is deemed filed concurrently with the complaint on January 13, 2017.

DISCUSSION

For the 2015-2016 school year, Student attended fourth grade at a private school in San Jose, California where parents had placed her. Mount Pleasant Elementary School District, Student's district of residence, assessed Student and convened an initial IEP team meeting on January 5, 2016. Mount Pleasant found Student eligible as a child with a specific learning disability. Mount Pleasant offered goals, related services, and a public school placement. Parents signed the IEP but chose to keep Student in private school for the remainder of the school year. Parents specifically indicated that the initial IEP could not start to be implemented until August 2016. Mount Pleasant then offered a Service Plan consisting of resource specialist program consultation for Student while she attended private school. Parents accepted.

Student's family then moved to Fresno, California, over the summer of 2016 and registered with the Clovis Unified School District. Student's complaint generally alleges that District is obligated to implement the January 5, 2016 IEP but has refused to do so. In the Motion for Stay Put, Student contends that the January 5, 2016 IEP was the last agreed upon and implemented IEP..

In opposition to the motion for stay put, District contends the January 2016 IEP was never implemented.. When Student registered with District, District drafted and implemented an August 22, 2016 interim IEP. District thereafter chose, pursuant to Education Code section 56325, to develop a new IEP for Student. District convened IEP team meetings on September 19, 2016, October 21, 2016, and December 21, 2016. Parents have not accepted District offer of FAPE.

Here, Student has not provided convincing evidence that the January 2016 IEP was ever implemented. Parents approved the January 2016 IEP upon the condition that it not be implemented until August 2016. Mount Pleasant's service plan was not an IEP and, therefore, does not equate to implementation of the IEP. The January IEP had not been implemented by Mount Pleasant before Student registered with District.

Nor has Student provided evidence that District implemented the January 2016 IEP. District prepared and implemented an August 2016 interim IEP and thereafter developed and offered a new IEP at subsequent team meetings. Further, Student's complaint contends that District has refused to implement the January 2016 IEP.

Stay put is the last agreed upon and implemented IEP. Here, the evidence fails to establish that the January 2016 IEP was ever implemented. Since the January 2016 IEP has never been implemented, Student is not entitled to a stay put based upon the January 2016 IEP.

ORDER

Student's motion for stay put is denied.

DATE: January 23, 2017

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings