BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>SAN MARCOS UNIFIED SCHOOL DISTRICT. | OAH Case No. 2018070509<br><br>ORDER GRANTING MOTION FOR STAY PUT |

On July 13, 2018, Student filed a motion for stay put. On July 18, 2018, San Marcos Unified School District filed an opposition to the motion for stay put. Student's stay put request is that San Marcos continue to provide him with transportation, and to pick him up in front of his house, as called for in his most recently agreed-to and implemented individualized education program.

## 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

San Marcos convened an annual IEP team meeting for Student on April 13, 2017. The meeting ended before Student's physical therapy services and transportation issues could be discussed. Student attends a nonpublic school and requires transportation to and from this

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

placement, and it is written into his IEP. The IEP team met again on July 10, 2017, at which time the notes from the meeting reflect a discussion which led to an agreement that Student would be picked up "in front of house at 7:08 a.m." He would be dropped off after school at another nearby location. The IEP reflects that Student had certain morning physical issues which required him to be picked up at his house. Parents signed consent to the IEP on July 10, 2018. In its opposition, San Marcos does not dispute that this was the last agreed to IEP, and it was implemented by San Marcos until May 2018.

In May 2018, the transportation director for San Marcos determined there were safety issues involved with picking up Student at his house. San Marcos unilaterally determined that Student would be picked up at a location other than in front of his house. This decision was made outside the IEP process. In its opposition San Marcos claims that picking up Student in front of his house, which is on the left hand side of a two-lane, one-way street violates a California title 13 regulation, section 1238. However, San Marcos also states that Student was usually picked up in front of his house on the right hand side of the street, although on a few occasions the driver would need to cross the street and escort Student from his home to the bus.

The parties met for an annual IEP team meeting in April 2018, but did not agree to a new IEP. The IEP which was last implemented for Student is the IEP from April 13, 2017, as amended on July 10, 2018. Stay put is found to be the transportation agreement in the notes for the July 10, 2018 IEP team meeting, which requires Student to be picked up in front of his house at 7:08 a.m. each school day he will be attending.

## ORDER

Stay put transportation requires San Marcos to pick up Student in front of his house at 7:08 a.m.

IT IS SO ORDERED.

DATE: July 20, 2018

Rebecca Freie

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings