BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BREA OLINDA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023061008

ORDER GRANTING MOTION FOR STAY PUT

AUGUST 22, 2023

On June 27, 2023, Student filed a request for due process hearing naming Brea Olinda Unified School District as respondent. On August 14, 2023, Student filed a motion for stay put. On August 17, 2023, Brea Olinda filed an opposition on the ground that the motion was unnecessary as no dispute exists that stay put is due.

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 entitled to stay put during the pendency of any dispute. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) Brea Olinda provided a sworn declaration from program specialist Kerry Mamrot, pledging that Student's program and services will continue in Student's current educational placement. Both sides agree that "stay put" is Student's April 20, 2022 IEP as amended on January 31, 2023. The fact that no dispute exists as to Student's right to stay put does not mean Student is not entitled to stay put. The entitlement is statutory unless no dispute exists as to Student's educational program, or any provision of the IDEA. Such a dispute does exist in this instance as demonstrated by Student's complaint filing.

ORDER

1. Student's motion for stay put is granted.
2. Student's most recently implemented IEP, the April 20, 2022 IEP as amended on January 31, 2023, shall be implemented pending resolution of this dispute.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings