BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. RIVER SPRINGS CHARTER SCHOOL.	OAH Case No. 2018031003 ORDER DENYING MOTION FOR STAY PUT

On March 21, 2018, Student filed a request for due process hearing (complaint) naming River Springs Charter School (Charter) and motion for stay put.

On April 3, 2018, Student filed a first amended request for due process hearing (amended complaint). OAH granted the unopposed request and the amended complaint was deemed filed on April 9, 2018.

On April 4, 2018, Student filed a first amended motion for stay put with supporting exhibits and parent's declaration. The motion seeks an order that The Prentice School, a non-public school, is Student's last agreed upon placement. On April 9, 2018, Charter filed an opposition to Student's first amended motion for stay put with supporting exhibits and a declaration from Charter's special education director.

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.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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

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

The relevant facts as alleged in Student's complaint and based upon the evidence submitted are undisputed. Student is twelve years old and eligible for special education. Student enrolled in Charter in August of 2015. The parties agree that Student's August 4, 2017 IEP is the last agreed upon and implemented IEP.

Student's first amended motion for stay put is supported by the sworn declaration of Parent, with attached IEPs. Student contends that her stay put placement during the pendency of this litigation under that IEP is The Prentice School. Student argues that the Charter's offer of a charter school at the March 2, 2018 IEP was a material change of placement that was not equivalent to Prentice.

Charter's opposition is supported by the sworn declaration of the Director of Special Education, with attached IEPs. The August 4, 2017 IEP states "Placement at The Prentice School as NPS for the first semester of the 2017-18 school year…," "River Springs Charter School is not offering Prentice as the specified school for stay-put circumstances," and "Placement is contingent on whether or not Student is making sufficient progress based on her unique needs based on data provided." Since Student's placement at Prentice was for a finite temporary period of time, it cannot be the basis for stay put. Accordingly, Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: April 11, 2018

DocuSigned by:
Jackie C. Dai
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JACKIE C. DAI
Administrative Law Judge
Office of Administrative Hearings