BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

SAN DIEGO UNIFIED SCHOOL DISTRICT,

and

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2021050766

OAH CASE NUMBER 2021020555

ORDER DENYING MOTION FOR STAY PUT

JUNE 1, 2021

On May 26, 2021, Student filed a motion for stay put. On May 28, 2021, San Diego Unified School District filed an opposition on the grounds that an order for stay put was not necessary because it continued to implement Student's last agreed upon individualized education program. Student filed a response to San Diego Unified's opposition on June 1, 2021.

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 requests a stay put order that San Diego Unified to continue to fund his placement at Devereux Residential Treatment Facility in Texas. San Diego Unified argues that a stay put order is not necessary because although it proposed a change of placement, it continues to implement Student's last agreed upon and implemented IEP. Student has not alleged that a dispute about what constitutes stay put exists.

San Diego Unified placed Student at Devereux in the fall of 2019. Student argues his last agreed upon IEP was the October 15, 2020 IEP that offered a residential treatment facility placement at Devereux. Although San Diego Unified alleges Student's last agreed upon IEP includes the December 8, 2020 IEP amendment goals, it agrees that Student's stay put includes placement at Devereux. San Diego Unified submitted a sworn declaration from Student's case manager that it continues to implement Student's placement at Devereux.

Student is entitled to remain at Devereux as the placement in his last agreed upon and implemented IEP and an order for stay put is not necessary. Student has not alleged that a dispute about what constitutes stay put exists or that San Diego Unified is

refusing to implement Student's last agreed upon and implemented IEP. If a dispute about stay put exists, Student may file a request for stay put with more specificity as to the nature of the dispute and the terms of stay put. A dispute about what constitutes a free appropriate public education does not necessarily mean there is a dispute about stay put. Therefore, the motion for stay put is denied.

ORDER

Student's Motion for Stay Put is denied.

Linda Johnson

Linda Johnson
Administrative Law Judge
Office of Administrative Hearings