BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ALTOS SCHOOL DISTRICT.

OAH CASE NUMBER 2024070722

ORDER DENYING MOTION FOR STAY PUT WITHOUT PREJUDICE

AUGUST 7, 2024

On July 18, 2024, Student filed a Request for Due Process with the Office of Administrative Hearings, called OAH, naming Los Altos School District, called Los Altos.

On July 24, 2024, Student filed a motion for stay put and represented the last agreed upon individualized education program, called an IEP, was attached and placement was Loyola Elementary School, called Loyola, in Los Altos. The purported IEP document attached with the stay put motion was a two-page unsigned document, dated October 25, 2022, entitled, "IEP—IEP Revisions to IEP for Next School Year." Student also represented that the purported and unsigned IEP document which sets

forth Almond Elementary as both the school of attendance and residence was incorrect, asserting Loyola to be the correct placement and stay put request.

Additionally, Student included an Amended Investigation Report from the California Department of Education, called CDE, dated November 16, 2023, regarding transportation obligations of Los Altos to Student. CDE's report and the issue addressed is not before OAH and Student did not explain why he included the CDE report as support for the stay put motion. However, CDE referenced a December 9, 2022 settlement agreement and a March 13, 2023 IEP suggesting that Loyola was a trial placement for Student.

On July 29, 2024, Los Altos School District, called Los Altos, filed an opposition to the stay put motion. On July 30, 2024, Los Altos filed an amended opposition to the stay put motion, attaching corrected exhibits which included emails regarding Student's residency and a court case to support its opposition. Los Altos argued Student was not a resident of Los Altos and therefore stay put should not be in Los Altos, but where Student actually resides. Los Altos' opposition was silent as to Student's last agreed upon and implemented IEP and placement.

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 IEP placement 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 become 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.)

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).)

STUDENT DID NOT INCLUDE HIS LAST AGREED UPON AND IMPLEMENTED IEP OR DOCUMENTS SUPPORTING A STAY PUT PLACEMENT

Student did not attach the last agreed upon and implemented IEP to the stay put motion. Parent did not sign the two-page document Student contends was the IEP that was a revision to an earlier dated IEP which was not provided with the motion. Additionally, if Student intended the CDE report to support Student's stay put placement request at Loyola, the report failed to do so. CDE's report suggested that Loyola may have been a temporary placement and that Student may have received special education under a more recent March 28, 2023 IEP. Student's motion did not include crucial information upon which a stay put may ordered.

Therefore, Student's stay put motion is denied without prejudice. Student may refile the motion with information, including signed IEP documents, clearly establishing Student's last agreed upon and implemented IEP placement.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings