BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>MILLBRAE SCHOOL DISTRICT,<br><br>v.<br><br>PARENTS ON BEHALF OF STUDENT. | OAH CASE NO. 2013030202<br><br>ORDER DENYING MOTION FOR STAY PUT |

On March 25, 2013, Student filed a motion for stay put. On March 27, 2013, the Millbrae School District (District) filed a response to Student's motion.

## 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 (IEP), 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.)

## DISCUSSION

Student is correct that he is entitled to remain in the placement set forth in his last agreed upon and implemented IEP while a dispute is pending. Ordinarily, an order for stay put is generally not required unless a dispute over placement exists. Here, while Student has filed a motion for stay put, the facts fail to establish that a dispute exists as to Student's placement and services, while this due process hearing procedures are pending.

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

To the contrary, in District's response to Student's motion, which is supported by sworn declaration, dated March 27 and March 29, 2013, by Ms. Kathryn E. Meola, attorney for District, District indicated that it has no plan to change Student's placement during the pendency of this due process hearing, and as such there is no stay put dispute. District has pledged by sworn declaration to continue providing services within Student's current educational placement. Accordingly, Student's motion for stay put must be denied as moot.

ORDER

Student's motion for stay put is denied.

Dated: April 9, 2013

/s/
ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings