BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CABRILLO POINT ACADEMY.

OAH CASE NUMBER 2022050604

ORDER REQUIRING ADDITIONAL EVIDENCE FOR STAY PUT

MAY 24, 2022

On May 16, 2022, Student filed a request for due process hearing, naming Cabrillo Point Academy as respondent. On May 17, 2022, Student filed a motion for stay put. On May 19, 2022, Cabrillo Point filed an opposition to the Stay Put motion. Student replied to the opposition on May 23, 2022.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his 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." 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).) All elements of placement are included in the IEP.

This case seeks Stay Put but does not provide evidence of the basis for the Stay Put order sought. Student did not identify or attach the last, signed and implemented IEP to his motion.

For purposes of stay put, the current educational placement is typically the placement called for in the student's most recently implemented individualized education program. (*Johnson v. Special Education Hearing Office* (2002) 287 F. 3d 1176, 1180.) However, some exceptions apply to that rule**.** (*Johnson, supra*, 287 F. 3d at p. 1181; *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133 [rev'd on other grounds].) In this case, no documents are attached to the Stay Put motion. Thus there is no basis on which to determine what the most recently agreed and implemented IEP placement is.

Here, Student has not provided adequate evidence of his last agreed upon and implemented placement. While he makes alternative requests for preferred placements, no evidence establishes that either of the requested placements were the placement designated in Student's last signed and implemented IEP.

Student is ordered to file a document entitled Stay Put Motion Evidence that attaches a copy of the most recent, signed and implemented IEP document, including any signed amendments to that IEP. Cabrillo Point has attached a settlement agreement it argues is part of the most recent, signed and implemented IEP. If Student believes a settlement agreement is part of the most recent, signed and implemented, IEP, Student should produce a signed copy of the document. Student is ordered to

limit this filing to only the evidence requested. Student has filed a motion and reply brief. No further argument accompanying the evidence is necessary. Student must file the additional evidence described here no later than Tuesday, May 31, 2022. It must be served on Cabrillo Point on the same day it is filed with OAH.

Any response from Cabrillo Point regarding the evidence shall be filed no later than Thursday, June 2, 2022, and shall not exceed five pages, including the caption page. This does not include any signed IEP or IEP amendment or signed settlement agreement that Cabrillo Point argues is part of the most recent, signed and implemented IEP, and that it has not already filed as part of its opposition. Cabrillo Point shall not duplicate the evidence filed by Student or duplicate evidence it has already filed. All arguments shall be limited to the issue of Stay Put only and shall not repeat previously asserted arguments.

Should Student believe a reply to Cabrillo Point's Stay Put Evidence Opposition, if any is filed, is required, it must be filed by June 3, 2022, and be limited to 5 pages, including the caption page. Student shall not repeat arguments previously asserted in its Stay Put motion or reply to Cabrillo Point's original motion opposition. All arguments shall be limited to the issue of Stay Put only.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings