

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

PALMDALE SCHOOL DISTRICT.

OAH CASE NO. 2009050621

ORDER GRANTING MOTION FOR
STAY PUT

On June 4, 2009, attorney Suzanne N. Snowden, on behalf of Student, filed a motion for stay put against the Palmdale School District (District). On June 10, 2009, attorney Lee Rideout, on behalf of the District, filed an opposition to Student's stay put motion. On June 15, 2009, Student filed a reply brief.

APPLICABLE LAW

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized educational 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.)

California Code of Regulations, title 5, section 3042, defines "educational placement" 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.

A student with a disability may be placed in an appropriate interim alternative educational setting (IAES) for not more than 45 days, if the substantial evidence shows that maintaining the current placement of such child is substantially likely to result in injury to the child or to others. A school district may file a request for an expedited hearing if it wishes to change a student's educational placement. Consideration must be given to the appropriateness of the child's current placement, and whether reasonable efforts have been

made to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services.¹ (20 U.S.C. § 1415(k)(2); 34 C.F.R. § 300.532(a) and (c) (2006.) The IAES must enable the child to continue to participate in the general curriculum, and to continue to receive those services and modifications described in the child's current IEP. The IAES must include services and modifications designed to prevent the behavior which led to the alternative placement from recurring. (20 U.S.C. § 1415(k)(3)(B); 34 C.F.R. § 300.530(d) (2006).)

DISCUSSION

The parties do not dispute that Student's last agreed-upon and implemented educational program is his March 4, 2008 IEP, which placed Student at Buena Vista Elementary School (Buena Vista) in a special day class. Student has cerebral palsy and is non-verbal. He is also wheelchair bound, and requires assistance from adults to perform all activities of daily living. Between the March 4, 2008 and April 14, 2009 IEP meetings, Student was repeatedly absent from Buena Vista due to medical issues. After one set of absences, Student returned to Buena Vista with medical orders that the District implement the use of a BiPAP machine for Student's breathing if he experienced difficulty with breathing.

Student stopped attending Buena Vista on March 19, 2009, due to a dislocated shoulder. Student received medical clearance to return to Buena Vista on April 13, 2009. At the April 14, 2009 IEP meeting, the District requested that Student's educational placement be home instruction due to his medical condition and the District's inability to safely care for Student at Buena Vista. The District had conflicting information from Student's medical professionals whether the District could safely administer the BiPAP machine, and offered home instruction until the District could obtain information that it could safely care for Student at Buena Vista.

On or about April 17, 2009, the District received information from Student's doctor that District personnel should not use the BiPAP machine with Student, and that if Student sleeps for a significant portion of the school day, Student should be at home because of his breathing difficulties while sleeping. On or about May 27, the District received a letter from Student's new pulmonologist that Student could safely attend Buena Vista with a BiPAP machine, under the care of qualified personnel. The District has not permitted Student to return to Buena Vista due to concerns regarding Student's safety due to his medical condition and confusion regarding the medical directives it has received.

The stay put provisions found in the Individuals with Disabilities Education Act (IDEA) are to permit a student who receives special education services to remain in the

¹ A school district may also go to federal or state court to obtain an injunction to change a student's educational placement. (*Honig v. Doe* (1988) 484 U.S. 305, 328 [108 S.Ct. 592].)

student's last agreed-upon and implemented educational placement to maintain the status quo, except in specified circumstances specified in the IDEA. The District's response does not state why it has not filed a request for an expedited hearing or an injunction to change Student's educational placement due to its belief that Student's safety is in serious jeopardy if he returns to Buena Vista. The District cannot unilaterally determine that Student cannot return Buena Vista, especially since the District previously educated Student at Buena Vista pursuant to similar care provisions in the medical release it received on May 27, 2009. Therefore, Student's motion for stay put is granted.

ORDER

Student's motion for stay put is granted.

Dated: June 15, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings