

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009070239

ORDER GRANTING IN PART AND  
DENYING IN PART STUDENT'S  
MOTION FOR STAY PUT

On July 3, 2009, attorney Mandy S. L. Favaloro, on behalf of Student, filed a motion for stay put against the Los Angeles Unified School District (District). On July 10, 2009, attorney Patrick J. Balucan, on behalf of the District, filed an opposition to Student's motion for stay put. On July 13, 2009, Student submitted a reply to District's opposition.

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.)

However, if a student's placement in a program was intended only to be a temporary placement, that placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64; *D. v. Ambach* (2nd Cir. 1989) 904, 907.)

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.

## DISCUSSION

### *Stay put placement for 2009 ESY*

Student contends that her stay put placement for the 2009 extended school year (ESY) is a general education ESY program pursuant to Student's last agreed-upon and implemented educational program, which is either the May 21, 2008 IEP, as amended on January 21, 2009, or the June 7, 2007 IEP.

The District asserts for the 2009 ESY that Student's last agreed-upon and implemented educational program was a special day class (SDC) and, therefore, District contends Student's 2009 ESY placement is an SDC.

Regarding ESY services and program, Student's last agreed-upon and implemented educational program was the June 7, 2007 IEP, in which Student, pursuant to her IEP, attended a preschool collaborative classroom (PCC) at Brockton Elementary School (Brockton) for the 2007 ESY. Student's parents agreed to this IEP and Student attended Brockton. Student's parent did not agree to the May 21, 2008 IEP until after the 2008 ESY, so the proposed ESY program was never implemented. Additionally, Student's parents did not consent to the May 14, 2009 IEP offer for ESY.

Student asserts that the Brockton PCC program was a general education class. The June 7, 2007 IEP is not clear whether the Brockton PPC, for ESY, was a general education class or SDC. The IEP states that Student will attend a general education class for SY 2007-2008, but does not state whether Brockton PPC was a general education classroom. The District's policies and procedures, attached to Student's response, establish that the Brockton PCC is an inclusion program with both special education and general education students, and also with regular education and special education educators and instruction. The declaration of Student's teacher provided by District does not establish that the Brockton ESY program was an SDC. The teacher's declaration establishes only that she was the class' special education instructor.

While Student attended a SDC at Fairburn Elementary School (Fairburn) for the 2008 ESY, there was no agreed-upon and implemented educational program for the 2008 ESY because Student's parents did not consent to the May 21, 2008 IEP. Additionally, neither party describes the program and the classroom composition of the Fairburn SDC, or states whether it was similar to the Brockton PCC. The fact that Student attended Fairburn during the 2008 ESY does not establish that an SDC was Student's last agreed-upon and implemented educational program.

Based on the foregoing, Student's last agreed-upon and implemented ESY program was the June 7, 2007 IEP, which was an inclusion program that included both special educational and regular education students, regular education and special education teachers, and regular education and special education instruction. Therefore, that is Student's ESY stay put placement.

*Stay put placement for 2009-2010 school year*

For the 2009-2010 SY, Student asserts that stay put is the placement and services she received at the end of SY 2008-2009 pursuant to the May 21, 2008 IEP, as amended on January 21, 2009. For the 2009-2010 school year (SY), the District agrees to continue to provide services and educational placement contained in Student's May 21, 2008 IEP, as amended on January 21, 2009.

Regarding SY 2009-2010, no dispute exists between the District and Student because the District agrees to provide Student with the services and educational placement as stated in the May 21, 2008 IEP, as amended on January 21, 2009. Therefore, Student's motion for stay put for SY 2009-2010 is denied because no dispute exists between the parties.

**ORDER**

1. Student's motion for stay put for the 2009 ESY is granted in part. Student's last agreed-upon and implemented educational program for ESY services and placement and her stay put placement for the 2009 ESY shall be a District inclusion program that includes both special education and regular education students and regular education and special education teachers and instruction, as described in the District's July 2005 special education policies and procedures manual.

2. Student's motion for stay put is denied for SY 2009-2010 because the parties are not in dispute regarding this placement.

Dated: July 20, 2009

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings