

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

LOS ANGELES COUNTY DEPARTMENT
OF MENTAL HEALTH.

OAH CASE NO. 2010031476

ORDER GRANTING MOTION FOR
STAY PUT

On March 11, 2010, Parents, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a Request for Mediation and Due Process Hearing (Complaint) that named the Los Angeles County Department of Mental Health (DMH). Together with the Complaint, Parents also filed with OAH a Motion for Stay Put. DMH has not filed with OAH a response to the Motion for Stay Put.

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); Ed. Code, §§ 48915.5, 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.)

California Code of Regulations, title 5, section 3042, defines “specific 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

In this case, Student is eligible for special education and related services under the disabling condition of emotional disturbance. Parents contend that Student’s last agreed-upon and implemented special education program is set forth in an IEP dated March 4, 2010. At the March 4th IEP, the team offered Student full time placement at Heritage Center, a residential treatment center in Utah. In conjunction with this offer, DMH also offered Student the following mental health services:

Individual therapy, at least 60 minutes, up to 120 minutes per week;
Family therapy, at least 120 minutes, up to 240 minutes per month;

Group therapy, up to 300 minutes per week;

Medication support, monthly or as determined appropriate by attending psychiatrist;

Case management, as needed.

Apparently, prior to the March 4, 2010 IEP, the team had placed Student at Aspen Ranch, a residential treatment center also located in Utah. In their Motion for Stay Put, Parents state that Student has been at Aspen Ranch for the last 18 months. At the March 4th IEP, DMH informed Parents that Aspen Ranch no longer meets the requirements of non-profit status as a residential care provider. For this reason, the IEP team offered Student placement at Heritage Center.

Regarding the March 4, 2010 IEP, Parents agreed with the offer to place Student at an out-of-state residential treatment center, and with the above-described mental health services. However, Parents do not agree with the change in location of the residential treatment center from Aspen Ranch to Heritage Center, and seek an Order that Student's stay put placement includes placement at Aspen Ranch.

Apart from stay put considerations, California law requires that, when making an out-of-state placement in a residential treatment center, an IEP team must make the placement at a facility that operates on a non-profit basis. (Welf. & Inst. Code, § 11460, subd. (c)(2), (c)(3); Cal. Code Regs., tit. 2, § 60100, subd. (h).) In this case, DMH is concerned about Student's continued placement at Aspen Ranch because, apparently, the State Auditor Controller has determined that Aspen Ranch is a facility that operates for-profit. However, the procedural safeguard of stay put in special education law operates like an automatic injunction. (*Honig v. Doe* (1987) 484 U.S. 305, 323-328 [108 S.Ct. 592].) Here, the concern of DMH is a matter of funding which does not defeat the fact that Aspen Ranch is part of Student's last implemented and agreed-upon placement. Accordingly, Parents' motion is granted.

ORDER

1. The Motion for Stay Put is granted.
2. Stay put in this case includes continued placement of Student at Aspen Ranch in Utah, and the mental health services set forth in Student's individualized education program dated March 4, 2010.

Dated: April 5, 2010

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings