

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LITTLE LAKE CITY SCHOOL DISTRICT.

OAH CASE NO. 2010040220

ORDER DENYING MOTION FOR  
STAY PUT

On April 6, 2010, Jeffrey Gottlieb, Esq., on behalf of Student, filed with the Office of Administrative Hearings (OAH) a Request for Mediation and Due Process Hearing (Complaint) that named the Little Lake City School District (District). Together with the Complaint, Student also filed a Motion for Stay Put (Motion). On April 8, 2010, Student filed a letter confirming that the parties agreed to extend the timeline for District to file its response. On April 14, 2010, District filed a response to the Motion, and on April 15, 2010, Student filed a reply to District's response.

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.)

The preservation of the status quo ensures that the student remain in the last placement that the parents and the district agreed to be appropriate. 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.

However, if a student's placement in a program was intended only to be a temporary placement, such 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, *Zvi D. v Ambach* (2<sup>nd</sup> Cir. 1989) 694 F.2d 904, 907.)

## DISCUSSION

In this case, Student is eligible for special education and related services. Student filed this Complaint alleging that District failed to offer Student a free appropriate public education (FAPE), because on January 31, 2010, District unilaterally terminated one-hour of speech and language therapy (SL) services provided to Student through a non-public agency (NPA). Student contends that District must continue to fund one-hour per week of the NPA services, because District agreed to provide this service in the April 27, 2009 IEP, the last agreed upon and implemented IEP. Student further contends that although the IEP delineated the dates April 27, 2009 through January 2010 next to this service, these dates do not alter the stay put, District's obligation to continue to fund SLNPA services during this dispute.

District asserts that by consenting to the April 27, 2009 IEP Student agreed that SLNPA services would be provided only through January 2010. Because this service was to be provided for a finite period, it was not stay put and this Motion should be denied.

It is not disputed that on or about January 16, 2008, Student and District (the parties) entered a settlement agreement regarding Student's placement and services. For the period of December 1, 2008 through the end of the 2008-2009 academic school year, the settlement agreement provided for SL services through a NPA for one-hour per week and one hour of District SL services per week. The parties also agree that the last agreed upon and implemented IEP was the April 27, 2009 IEP and it provided for SL services through a NPA for one-hour per week and one-hour of District SL services per week. The parties further agree that on January 31, 2010, District stopped funding Student's SLNPA services and parents have continued to fund this service.

It is not disputed that on June 17, 2009, District held an addendum IEP to discuss Student's SL services. The team discussed Student's progress in speech and language and a report prepared by the NPA. After full discussion, the IEP team agreed that District would provide three additional hours of SLNPA services to be completed during the extended school year (ESY) and the beginning of the 2009-2010 school year. The IEP team did not extend the January 2010 end date for the SLNPA services.

Student contends that he is entitled to continue to receive SLNPA services because he has received them for the past two years as a part of a settlement agreement and the April 2009 IEP. Student argues that the January 2010 date would not affect the stay put, because all services in an IEP have either an implicit or explicit beginning or ending date and should a disagreement occur regarding the continuation of agreed upon services, stay put would apply to all services. Student further argues that it was his parents' understanding that if the District wanted to terminate the SLNPA services, it must provide prior written notice explaining the rationale for terminating such services, assess Student and hold an IEP meeting. Student's arguments are flawed.

The preservation of the status quo ensures that the student remains in the last placement that parents and the district agreed to be appropriate (*Verhoeven, supra*, 207 F.3d at p. 10.) However, in the case of Student's SLNPA services as provided in the April 27, 2009 IEP, the parties expressly agreed that Student would only receive services from April 27, 2009 to January 2010. Furthermore, the June 2009 IEP addendum did not address extending the end date but specifically provided for three more NPA sessions to cover ESY. In *Verhoeven*, the court found that to maintain services beyond that agreed to would change the status quo, not preserve it. Similarly, in the case at hand, to maintain Student's SLNPA services would actually change the agreed-upon status quo, thereby undermining the purpose behind 20 United States Code section 1415(j). Therefore, Student's motion for stay put placement is denied.

### ORDER

The Motion for Stay Put is denied.

Dated: April 23, 2010

/s/

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CLARA SLIFKIN  
Administrative Law Judge  
Office of Administrative Hearings