BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ARCADIA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2010060397 ORDER DENYING STUDENT'S MOTION FOR STAY PUT

On June 10, 2010, Student filed a Request for Due Process Hearing against the Arcadia Unified School District (District). On June 25, 2010, Student filed a motion for stay put. On June 30, 2010, Angela Gordon, attorney for District, filed an opposition to the motion.

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.)

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.)

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.)

DISCUSSION

On December 23, 2009, the parties entered into a written agreement that District would fund Student's placement at Big Springs School, a non public school (NPS), in an

amount not to exceed $17,604 for educational services (basic tuition only) for the 2009-2010 regular school year. The parties agreed that District's funding of Student's placement for the 2009-2010 regular school year was part of a settlement of disputed claims, the agreement states this placement at NPS "shall not constitute a part of Student's stay-put placement as that term is commonly used in state and federal special education law and practices."

The agreement further provides that;

> "Should a dispute arise at Student's [2010-2011] triennial IEP team meeting, the parties agree that Student's stay-put placement, as that term is commonly used in state and federal special education law and practice, shall be in a general education classroom in the District as outlined in Student's January 23, 2009 IEP and February 20, 2009 and September 18, 2009 amendments.". The general education classroom with related services was outlined as:

> General Education Classroom within Arcadia Unified School District;
> Specialized Academic Instruction (RSP), 540 minutes each week;
> Speech and Language, 60 minutes weekly (small group);
> Occupational Therapy, Individual in Clinic, 50 minutes each week;
> Occupational Therapy, Consultation, 30 minutes each month;
> Inclusion Support, 60 minutes each month; [and]
> Additional Classroom Aide Support, 1800 minutes each week.

Student argues that he is placed at the NPS and has made progress in his current setting at the NPS and is benefiting from the current placement and this constitutes a FAPE, and requests a stay put order, but provides no legal authority for a finding of a stay put order in light of the written agreement between the parties.

It is undisputed that in December 2009, the parties agreed that Student's current placement at Big Springs School would not be considered his current placement for stay put purposes should there arise a disagreement about the 2010-2011 school year. Rather, the placement for a stay-put motion was to be as described above, in a general education classroom with related services. The agreement further states that it is the entire agreement and understanding of the parties, and that the parties read the agreement in full, understand it and voluntarily agree to all provisions. Therefore, it is apparent that the placement of Student at Big Springs School was a temporary placement. Accordingly, Parents motion that placement of Student at Big Springs School be found to constitute stay put is denied.

ORDER

1. Student's motion for stay put is denied and Student's stay put placement is the District's general education placement as documented in the December 23, 2009 agreement, and outlined below.

2. Arcadia Unified School District shall provide the placement and services to Student that were agreed upon between the parties as Student's last agreed upon placement, namely:

General Education Classroom within Arcadia Unified School District;
Specialized Academic Instruction (RSP), 540 minutes each week;
Speech and Language, 60 minutes weekly (small group);
Occupational Therapy, Individual in Clinic, 50 minutes each week;
Occupational Therapy, Consultation, 30 minutes each month;
Inclusion Support, 60 minutes each month; [and]
Additional Classroom Aide Support, 1800 minutes each week.

Dated: July 02, 2010

/s/

LISA O'BRIEN
Administrative Law Judge
Office of Administrative Hearings