

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

COUNTY OF MONTEREY OFFICE OF
EDUCATION ,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010060753

ORDER GRANTING MOTION FOR
STAY PUT

On, June 18, 2010, the County of Monterey Office of Education (County) filed a Request for Due Process Hearing¹ (compliant) against Parent, on behalf of Student (Student).

On June 29, 2010, Student filed his response to County's complaint and made a motion for stay put. County filed a "non-opposition" response to Student's motion on July 2, 2010.

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 Sch. Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *Zvi D. v. Gordon Ambach* (2d Cir. 1982) 694 F.2d 904.)

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. (*Johnson v Special Education Hearing Office* (9th Cir. 2002) 287 F.3d. 1176, 1180; *Thomas v. Cincinnati Board of Education* (6th Cir. 1990) 918 F.2d 618, 625.) In California, "special educational placement means that unique combination of facilities, personnel, location or equipment necessary to provide instructional

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

services to an individual with exceptional needs, as specified in the [IEP].” (Cal. Code Regs., tit. 5, § 3042.)

A student is not entitled to the identical services pursuant to his or her IEP when those services are no longer possible or practicable. (*Ms. S. v. Vashon Island* (9th Cir. 2003) 337 F.3d 1115, 1133-1134.) When a student’s “current educational placement” becomes unavailable, the local educational agency must provide the student with a similar placement in the interim. (*See Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533.)

DISCUSSION

Student is an 11-year-old male who has been found eligible for special education under the eligibility criteria of autism. As part of his June 4, 2009 individualized education program (IEP), Student’s last agreed-upon and implemented IEP, Student has received the “SCERTS” behavior services from the Central Coast Kids and Families (CCKF), a non public agency (NPA). In this motion, Student seeks an order from the Office of Administrative Hearings (OAH) requiring County to continue to contract with the CCKF to provide services to him.

In its response to Student’s motion, County concedes that the June 4, 2009 IEP is Student’s last agreed-upon and implemented IEP, and that Student is entitled to placement and services as provided for in that IEP. However, County contends, because CCKF has notified County that it no longer wishes to serve Student, its staff has been, and would be providing the SCERTS behavior services to Student.

County has provided no evidence supporting its contention that it is no longer possible or practicable to provide Student with behavior services through CCKF. Standing alone, County’s contention that CCKF “has quit,” or that it is no longer willing to implement Student’s IEP or “serve Student,” is inadequate to support a finding that the provision of behavior services by CCKF to Student is now “impossible” or “impracticable”. Other than the declaration of Gail Yulich,² Principal for the Autism Spectrum Disorder Program for County, no document was provided from CCKF showing that CCKF is either incapable or unwilling to provide services to Student. In her declaration, Ms. Yulich indicated that the IEP team, including representatives from CCKF, recommended that Student’s services with CCKF be discontinued. Despite the recommendation, Student is entitled to Stay Put pending the completion of this due process hearing. Further, CCKF is still in business and is serving other students.

At this time, the District has failed to establish that continuing CCKF as the service provider to Student is now impossible or impracticable. (*Ms. S. ex rel. G. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Therefore, for stay put purposes,

² The declaration of Ms. Yulich is not sworn or made under the penalty of perjury.

the District is required to provide the services of CCKF for Student. This order can be reviewed if County has additional information that CCKF is not available and it needs to change Student NPA provider.

ORDER

Student's request for stay put utilizing the services of CCKF is granted.

Dated: July 07, 2010

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings