

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. 2010071079

ORDER DENYING MOTION FOR  
STAY PUT

On July 23, 2010, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming District as the respondent. On July 26, 2010, Student filed a motion for stay put. No opposition has been filed.

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.)

DISCUSSION

The complaint alleges that, in August 2009, the parties settled a prior due process matter by entering into a Settlement Agreement (Agreement) that provided for placement and services through summer 2010. The Agreement also called for assessments, to be followed by an IEP meeting in April 2010 to address the 2010-2011 school year. The Agreement further stated that if there was disagreement at that IEP meeting, stay-put for the 2010-2011 school year would consist of the following placement and related services: general education Kindergarten, Pre-Kindergarten Itinerant Teacher (PKIT) services for 120 minutes per month, one hour per week of non-public agency Language and Speech (NPA/LAS), one hour per week of school-based LAS, 30 minutes per week of school based occupational therapy (OT), one hour per week of clinic-based OT, 14 hours per week of behavioral intervention

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<sup>1</sup> 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).

implementation (BII) services, and six hours per month of behavioral intervention development (BID) services.

In or around April 2010, the contemplated IEP meeting was convened. District made an offer of FAPE for the 2011-2011 school year, the exact terms of which are in dispute. Parents responded through their attorney by letter dated June 15, 2010. According to the complaint, in that letter Parents “did not agree with the District’s offer of LAS services,” “indicated confusion” over the “service delivery model” of the LAS services that were being offered, “disagreed with the District’s offer of behavior services,” and “also disagreed with the District’s offer of BID services.” This due process matter ensued. The complaint alleges that the offer of FAPE was not a “cohesive offer of placement and services with sufficient detail to enable Parents to fully consider the appropriateness of the offer,” and that “it is unclear from the IEP document whether LAS services will be delivered in a group or individual setting. . . and it is also unclear from the IEP document how much BII support per day [Student] will be receiving within the general education setting.” The complaint further alleges that the offer was substantively inappropriate insofar as it failed to offer appropriate LAS or behavior services.

Notwithstanding the complaint’s allegations, the Motion now contends that the attorney’s June 15, 2010 letter constituted a “limited consent” by Parents to the offer of FAPE that District made at the April 2010 IEP. The Motion further contends that this “limited consent” modified the terms of the Agreement, and ought to constitute stay-put. Thus, the Motion seeks an order of stay-put under the stay-put clause of the Agreement, “as modified by what has otherwise been agreed to by the parties in June 2010.” According to the Motion, the new agreement that purportedly arises out of the June 2010 letter consists of the following placement and services: general education kindergarten classroom, 60 minutes per week of school-based OT, one hour per week of school-based LAS, one hour per week of NPA/LAS, 14 hours per week of BII provided by the NPA known as IECF, and 6 hours per month of BID provided by IECF.

The Motion is denied. The Agreement cannot be unilaterally amended by the attorney’s June 15, 2010 letter. Furthermore, the letter by its own terms does not constitute a “limited consent” by Parents to the District’s FAPE offer, but rather sets forth their many areas of disagreement with it. Moreover, the terms of the District’s offer of FAPE is the subject of the current due process dispute. Thus, stay-put pending the hearing in this matter is governed by the Agreement. The Motion alleging that the Agreement’s terms have been “modified by what has otherwise been agreed to by the parties in June 2010” is denied in its entirety.

ORDER

The motion for stay put is denied.

IT IS SO ORDERED.

Dated: August 03, 2010

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings