

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIPON UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010080006

ORDER DENYING MOTION FOR
STAY PUT

On July 30, 2010, Student filed a motion for stay put (Motion). Student contends that his stay put placement is the placement and services set forth in an IEP dated April 9, 2007, which Student provided as an exhibit. Also attached as an exhibit to the Motion was a settlement agreement dated January 15, 2009, which expressly stated that the placement and services set forth in the settlement agreement did not constitute stay put. The recitals in the settlement agreement reflect that Student attended a District school until a dispute arose between the parties during the 2008-2009 school year. Student also provided evidence that pursuant to the settlement agreement, he had been home school since approximately October 30, 2009.

On August 4, 2010, Ripon Unified School District (District) filed an opposition to the Motion. In its opposition, District submitted evidence demonstrating that on September 17, 2007, Student's parent signed agreement to part of an IEP dated May 18, 2007. In particular, parent agreed to the "services on page 2," but disagreed to a proposed "fade out plan," and use of District behavioral aides or occupational therapists. In addition, parent objected to unspecified "mistakes" in other parts of the IEP and the notes from a June 1, 2007 meeting that parent did not attend. Page two of the May 18, 2007 IEP sets forth the following placement and services that parent agreed to: placement in a District general education classroom; two, 20 minutes speech therapy sessions per week, delivered on a "pull out" basis during the school day; a 1:1 classroom behavior intervention aide to be provided during the school day for 375 minutes, five days a week, by any NPA under contract with the District or its SELPA; 16 hours of monthly behavior intervention consultation by any NPA under contract with the District or its SELPA; home behavior intervention, academic support and parent training for six hours per week by any NPA under contract with the District or its SELPA; and two, 50-minute per week occupational therapy sessions (totaling 100 minutes) in a clinic setting to be provided by someone other than a District employee.

Student filed a reply on August 5, 2010. In the reply, Student provided evidence that at all times, the Genesis NPA provided the behavior intervention services referenced in the April 9, 2007 and May 18, 2007 IEPs. Student did not provide evidence that Genesis currently has a contract with the District or its SELPA. Student contends that even if Student's partial consent to the May 18, 2007 IEP makes it the stay put placement, behavior

intervention services must be provided by Genesis as part of stay put because the notes pages of the IEP refer to services being provided by Genesis.

As discussed below, Student's motion is denied to the extent Student contends that the April 9, 2007 IEP controls for purposes of stay put. However, Student is correct that Genesis services constitute stay put under the May 18, 2007 IEP so long as Genesis currently has a contract with the District or its SELPA. Accordingly, the terms of the May 18, 2007 IEP will be ordered as Student's stay put placement, with Genesis providing the behavior intervention services so long as it is currently under contract with the District or its SELPA.

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.) In one unpublished decision, a United States District Court found that to determine whether a particular agency is required to provide a related service in the IEP, the entirety of the IEP should be considered, not just the single page listing the placement and related services. (*Joshua A. ex. rel. Jorge A. v. Rocklin Unified School District* (U.S.D.C. E.D. Cal. August 20, 2007) 2007WL2389868, *3.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability].)

ANALYSIS

Here, Student's Motion failed to address the existence of the May 18, 2007 IEP to which Student's parent consented in part on September 17, 2007. Although Student's parent did not consent to the fade out plan for behavior intervention services or a transition to District occupational therapists, the consent is valid as to all other placements and services. As reflected in the recitals of the settlement agreement, Student attended a District school after consenting to the May 18, 2007 IEP, corroborating District's contention that this IEP was implemented. Accordingly, for purposes of stay put, Student's last agreed upon and implemented placement is not the April 9, 2007 IEP, but instead is the May 18, 2007 IEP that was consented to on September 17, 2007.

As to which agency should provide the behavior intervention services, the services page of the May 18, 2007 IEP makes references to the services being provided by an NPA “under contract with SELPA or District.” However, the notes pages of the IEP make it clear that at the time the IEP was drafted, the Genesis NPA had been, and was expected to continue, providing those services. (See Exhibit A to Opposition at pp. 11-12.) Reading the services page and the notes pages as a whole, the May 18, 2007 contemplates that the behavior intervention services would be provided by Genesis to the extent it was under contract with the SELPA or the District.

It has been over three years since the May 18, 2007 IEP, and circumstances may have changed. Neither party has addressed whether Genesis currently has a contract with the District or its SELPA. Accordingly, if Genesis no longer has a contract with the District or its SELPA, or if Genesis declines to provide services, the District may use another NPA under contract to the District or its SELPA. As to placement, because almost three years have past since parent consented to the May 18, 2007 IEP, the placement shall be in an age-appropriate general education classroom. In sum, Student’s stay put placement shall be those portions of the May 18, 2007 IEP to which parent consented, in an age-appropriate classroom, with Genesis providing the behavior intervention services if it currently has a contract with the District or its SELPA and agrees to provide the services.

ORDER

1. The Motion for Stay Put is denied to the extent it seeks enforcement of the April 9, 2007 IEP as the stay put placement.
2. Unless the parties agree otherwise, Student's stay put placement while the instant due process hearing request is pending shall be those portions of the May 18, 2007 to which parent agreed, specifically:
 - a. placement in an age-appropriate District general education classroom;
 - b. two, 20 minutes speech therapy sessions per week, delivered on a "pull out" basis during the school day;
 - c. a 1:1 classroom behavior intervention aide to be provided during the school day for 375 minutes, five days a week;
 - d. 16 hours per month of behavior intervention consultation;
 - e. six hours per week of home behavior intervention, academic support and parent training; and,
 - f. two, 50-minute occupational therapy sessions per week (for a total of 100 minutes) in a clinic setting to be provided by someone other than a District employee.
3. The services in paragraphs 2.c., 2.d., and 2.e., shall be provided by the Genesis NPA if, as of the date of this motion, it is under a contract with the District or its SELPA. If Genesis is not under contract with the District or SELPA, or otherwise chooses not to provide services to Student, then the services shall be provided by any NPA under contract with the District or its SELPA.

Dated: August 6, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings