

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

RIPON UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010080302

ORDER DENYING MOTION FOR
STAY PUT

On August 9, 2010, Parents on behalf of Student (Student) filed a Request for Due Process Hearing¹ (compliant), naming the Ripon Unified School District. Together with his complaint, Student made a motion for stay put.

On August 12, 2010, District filed its response and opposition to Student's motion. On August 13, 2010, Student filed its reply to District's opposition.

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

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).

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.)

CONTENTIONS OF PARTIES

In his motion for stay put, Student seeks an order from the Office of Administrative Hearings (OAH) requiring District to continue to contract with Genesis to provide behavior intervention services to him. Student contends that his stay put placement is the placement and services set forth in an IEP dated August 24, 2009, which Student provided as an exhibit. Student argues that he is entitled to those combinations of placement and services in that IEP, including the behavior intervention services, until the parties resolve the current dispute.

District contends that while it is obligated to implement Student's last agreed upon IEP, and provide behavior intervention services to Student through an NPA, it is only required to provide the behavior intervention services through any NPA with which District/SELPA has a contract. Therefore, District explains that because its Master Agreement with Genesis expired in July 2010, District has retained Living Well, another NPA, in place of Genesis to provide those services previously provided by Genesis to Student. Finally, District contends that the last agreed to IEP for Student is the May 6, 2010 IEP,² rather than the August 24, 2009, which Student maintains is the last agreed-upon and implemented IEP.

DISCUSSION

Student, as part of his IEP, has received behavior intervention services from the Genesis Behavior Center (Genesis), a non public agency (NPA). Student provided evidence that, at all relevant times through August 2010, Genesis provided him with behavior intervention services pursuant to his August 24, 2009 IEP, when District attempted to substitute Genesis with Living Well.

District argues that the May 6, 2010 IEP is Student's last agreed upon and implemented IEP. However, District has not submitted any evidence that the May 6, 2010 IEP was implemented. Therefore, District has provided inadequate evidence in support of its contention that the May 6, 2010 IEP is the last agreed upon and implemented IEP for Student.

² The IEP meeting was convened on January 11, 2010, continued to March 8, 2010 and concluded on May 6, 2010. A copy of the May 6, 2010 IEP submitted by Student does not establish the fact that Parents consented to the IEP.

Regarding the question of which NPA should provide the behavior intervention services to Student, District does not dispute the fact that Student had received the behavior intervention services from Genesis. However, based on the submitted IEPs, including both the August 24, 2009 and the May 6, 2010 IEPs, Student's behavior intervention services are expected to be provided by "any NPA under contract with the District/SELPA", and not specifically, by Genesis or any other named NPA. According to the sworn declaration of District's Director of Students Services, District no longer has a contact with Genesis. Therefore, District is entitled to provide the behavior intervention services to Student through Living Well, which is currently under contract with the District.

Therefore, for stay put purposes, the District is required to provide the behavior intervention services to Student through an NPA under 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.

Based on the information provided to OAH at this time, Student is correct that the August 24, 2009 IEP is Student's last agreed upon and implemented educational program and constitutes stay put for Student. However, District has established that its Master Agreement with Genesis has expired, and it has retained Living Well, the current contracted NPA provider, to provide behavior intervention services to Student pursuant to Student's IEP. Student did not provide evidence that Genesis currently has a current Master Agreement with the District or its SELPA. Therefore, Student's request for stay put is denied.

ORDER

Student's request for stay put for District to utilize the services of the Genesis Behavior Center is denied.

Dated: August 17, 2010

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings