

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. 2010080523

ORDER DENYING MOTION FOR
STAY PUT

On August 11, 2010, Parents on behalf of Student (Student) filed a Request for Due Process Hearing¹ (compliant), naming the Ripon Unified School District (District). Together with his complaint, Student made a motion for stay put. On August 16, 2010, the District filed its response and opposition to Student’s motion. On August 17, 2010, Student filed his reply to the District’s opposition.

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 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.)

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.)

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).

DISCUSSION

In his motion for stay put, Student seeks an order from the Office of Administrative Hearings (OAH) requiring the District to continue to contract with Genesis Behavior Center (Genesis), a non public agency (NPA), to provide behavior intervention services to him. The parties do not dispute that Student's last agreed upon and implemented education program is the May 14, 2010 IEP. Student contends that his stay put placement is the placement and services set forth in this IEP, which includes behavior intervention services from Genesis.

The District contends that while it is obligated to implement Student's last agreed upon and implemented 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 the District or Special Education Local Plan Area (SELPA) has a contract. Therefore, because the District's Master Agreement with Genesis expired in July 2010, the District is in the process of procuring another NPA to replace of Genesis to provide behavior intervention services to Student.

Regarding the question of which NPA should provide the behavior intervention services to Student, Genesis provided this service before and after the May 14, 2010 IEP meeting. However, based on the submitted IEP, Student's behavior intervention services were 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 Camille Taylor, District's Director of Students Services, the District no longer has a contact with Genesis. Therefore, the District is entitled to provide the behavior intervention services to Student through another NPA, which has contract with the District or SELPA.

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. Because Genesis no longer has a contract with the District or its SELPA, the District may use another NPA under contract to 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 23, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings