

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONROVIA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011010387

ORDER GRANTING MOTION FOR
STAY PUT

On January 14, 2011, Student filed a motion for stay put. On January 21, 2011, the District filed a partial opposition to Student's motion.¹ On January 24, 2011, Student filed a response to the District's partial 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); 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.)

¹Student argues that OAH should not consider the District's opposition because it was filed five business days after Student filed his motion, and OAH's scheduling order states that "If a party wishes to oppose a motion, such opposition must be received by OAH at the Sacramento location no later than 3 business days after service of the motion." Student filed his motion on January 14, 2011. January 17, 2011, was a legal holiday, so District's partial opposition was filed four business days after Student filed its motion, not five. The statement concerning three business days is based on OAH's policy that makes motions available for review by an Administrative Law Judge only after the passage of three business days. If a response is received after that time, the judge reviewing the motion and making any necessary order may consider it, unless there are other legal reasons for not doing so. Accordingly, the District's partial opposition was considered.

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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.)

DISCUSSION

In her original stay put motion, Student asked that OAH order the District to provide her with, or pay for, the same services she received pursuant to the last implemented IEP which was dated November 18, 2008. Student attached a copy of the IEP to the motion. Parents signed the IEP on December 4, 2008. Student is requesting 320 minutes per month of resource specialist program (RSP) services, 30 minutes of monthly consultation by an occupational therapist (OT), and 10 hours per week of services from Lindamood Bell (LMB), although Student acknowledged that the last signed IEP provided for only eight hours per week of LMB services in her response filed on January 24, 2010.

In its opposition, the District claims that on December 4, 2008, the parties agreed that Student would be provided with 20 minutes of RSP services Monday through Thursday each week. This means that in the course of a normal month, Student would receive 320 minutes of RSP services, and Student acknowledges this to be her understanding in her response to District's opposition. Pursuant to the IEP documents, these services should be pulled out, unless the parties agree to another form of services. The District does not oppose the OT services.

The primary conflict between the parties regarding the stay put motion is the payment for LMB services. The District contends in its opposition that the 10 hours per week of LMB services was only intended to be temporary, pointing out that in the IEP signed on December 4, 2008, it only agreed to pay for LMB services through March 31, 2009, and all services ended on that date. However, in its response to the opposition, Student provides a Parent-signed copy of an amendment to that IEP dated March 26, 2009, in which the District agreed to pay for LMB services for 76 hours for the extended school year, and eight hours per week of LMB services until November 18, 2009, when another IEP meeting was scheduled, excluding all school breaks. In addition, Student has attached copies of parts of other unsigned IEPs extending to January 6, 2010, in which the District was continuing to offer payment for some LMB services. Student contends that the District did pay for LMB services, even though Student had not signed any IEPs after March 31, 2009, and Student consistently received these services until the 2010-2011 school year. District has filed nothing that disagrees with these contentions. Accordingly, the amount of Student's stay put LMB services is eight hours per week.

ORDER

1. Student's motion for stay put, as amended, is granted.
2. The District shall provide Student with 320 minutes per month of RSP services.
3. The District shall provide Student with 30 minutes per month of OT consultation services.
4. The District shall provide Student with 8 hours per week of LMB services.

Dated: February 7, 2011

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings