

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011060876

ORDER GRANTING STUDENT'S
MOTION FOR STAY PUT

On June 30, 2011, Student filed a motion for stay put. The Los Angeles Unified School District (District) has not filed an opposition or otherwise replied to Student's motion.

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)¹; Ed. Code, § 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.)

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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

Student contends in his motion that the placement and services on his last implemented IEP, dated June 7, 2010, includes 38 hours of language and speech services provided by a non-public agency, and extended school year (ESY) services. Student contends that the District is refusing to provide him with ESY this summer and is refusing to continue his language and speech services through the non-public agency at a rate of 38 hours per year. As stated above, the District has not replied to Student's motion.

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

A review of Student's IEP dated June 7, 2010, which Student attached to his motion for stay put, indicates at part 4 of the document that the District did agree to provide Student with 38 hours of language and speech services a year, to be provided by a non-public agency. Those hours are therefore part of Student's stay put placement and must be provided to him unless the parties agree otherwise or until the issue is otherwise determined through a due process proceeding.

The question of Student's right to ESY placement and services is not quite as clear. Student's IEP contains a page entitled "Individualized Education Program, IEP FAPE Part 1- Eligibility, Placement and Supports." On that page, there is a box entitled "Additional Factors." Extended school year is listed as a possible additional factor, with the words "yes" and "no" listed in the column next to ESY. However, on the IEP document attached to Student's motion, neither "yes" nor "no" appear to be circled or otherwise checked off.

However, a review of the portion of Student's IEP entitled "IEP FAPE Part 2- Summary of Services" partially supports Student's contention that he is entitled to ESY services. There are seven services listed on this portion of the IEP: 1) Occupational Therapy, to be provided as a direct, collaborative service; 2) Behavior Intervention Implementation, to be provided as a direct, collaborative service; 3) RSP (presumably resource specialist program), to be provided as a direct, collaborative service; 4) Language and Speech services, to be provided directly on a pull-out basis, by a single provider; 5) Occupational Therapy, to be provided directly, by a single provider; 6) Language and Speech services, to be provided directly, by a single provider; and 7) Behavior Intervention Development, to be provided as a direct, collaborative service. In all cases, *except for the RSP services*, Student's IEP indicates that the service applies to ESY as well as the regular school year.

Therefore, Student has demonstrated, through his IEP, that his stay put placement and services includes occupational therapy, behavior intervention implementation, language and speech services, and behavior intervention development, during the extended school year. These services, as indicated in his IEP, are Student's stay put for ESY. RSP services are only stay put for the regular school year.

ORDER

Student's motion for stay put is granted, as qualified above. The Los Angeles Unified School District is directed to maintain Student's placement and services as detailed in his June 7, 2010 IEP, including 38 hours of language and speech services each school year, to be provided by a non-public agency, and the ESY services detailed on the Summary of Services page of Student's IEP, as described above, until the parties agree otherwise or until the issues are resolved through due process proceedings.

Dated: July 13, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings