

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MORGAN HILL UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011061168

ORDER DENYING MOTION FOR
STAY PUT

On July 5, 2011, Student filed a motion for stay put. On July 8, 2011, District filed a response opposing Student's request or alternatively requesting that stay put be based upon Student's March 9, 2009 IEP in its entirety and not on a piecemeal basis.

Student's request for stay put seeks an assurance that parents will be reimbursed for expenses for 15 hours per week for 4 weeks of in-home ABA services at \$15/hour, 3 hours per week for 4 weeks of ABA training at \$15 per hour, 1 hour per week consultation at \$135 per hour, and an unspecified amount of ESY speech and classroom services. Neither Student's motion nor District's response are supported by declarations under penalty of perjury that offer supporting facts. However, District's response and Student's complaint attach a copy of Student's March 9, 2009, which will be presumed for purposes of this motion to be the last agreed upon IEP.

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, § 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.)

The law of stay put provides for continuation of the last agreed-upon placement while a due process hearing is pending. Student's motion seeks "stay put" only for parental reimbursement for select services. However, nothing in the March 9, 2009 IEP references a reimbursement formula, or any education program under which Student is entitled to reimbursement for some home services without attending school under the entire program set

forth in the IEP. Accordingly, the stay put motion must be denied because it is not seeking to implement the last agreed-upon placement, but instead is seeking some other program.

ORDER

Student's motion for stay put is denied.

Dated: July 12, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings