

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2011091066

ORDER GRANTING MOTION FOR  
STAY PUT

On September 28, 2011, Parent on behalf of Student (Student) filed a motion for stay put. On October 3, 2011, Santa Monica-Malibu Unified School District (District) filed an opposition to the motion. On October 5, 2011, Student filed a reply to the opposition. On October 13, 2011, the Office of Administrative Hearings (OAH) issued an order directing Student's counsel to file additional documents. Student filed the requested documents on October 13, 2011.

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)<sup>1</sup>; 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.)

DISCUSSION

On May 23, 2011, Student's parent provided consent to a May 4, 2011 IEP. This consent was provided pursuant to a written settlement agreement dated May 20, 2011. Pursuant to the May 20, 2011 settlement agreement, the goals contained in the May 4, 2011 IEP would be implemented immediately and the remaining provisions of the IEP would be implemented on August 30, 2011. The settlement agreement, among other things provided for a change in placement from Will Rogers School to John Muir School. The offer of FAPE

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

contained in the May 4, 2011 IEP provided that Student would receive adaptive physical education (APE) in a small group twice a week for thirty minutes each sessions, three individual sessions of occupational therapy for thirty minutes each session per week, one 50 minute session of clinic based occupational therapy per week, three- twenty five minute sessions of speech and language per week, specialized academic instruction (SAI) 150 minutes per day, Intensive Behavior Intervention (IBI) aide services for the entire school day and 120 minutes per week of IBI supervision per week. The May 4, 2011 IEP contemplates a transition of Student's aide services and supervision services from an NPA provider to District personnel. In pertinent part the IEP provides that the IEP team recommends an NPA aide until September 30, 2011. The May 4, 2011 IEP further states that District will provide an IBI District aide and that by the end of September 2011, the team will reconvene to determine if more transition time between NPA and District behavior aide is required. The IEP services were implemented beginning August 30, 2011 as agreed by the parties in the May 20, 2011 settlement agreement. On September 21, 2011, Parents notified District in writing that Parents were withdrawing consent to the transition from NPA aide to District aide on September 30, 2011 contained in the May 4, 2011 IEP. The letter further advised that Parents objected to District's intermittent use of a District aide and requested that a functional behavioral analysis be performed before any further changes to Student's behavioral services. On September 27, 2011, an IEP meeting was held to discuss additional transition time for the aide services, although the District offered three more weeks of transition time, no agreement was reached. On September 28, 2011, Student filed this motion for stay put and a due process hearing request seeking a determination about the provision of NPA aide support and supervision.

The May 4, 2011 IEP as modified by the May 20, 2011 settlement agreement was the last agreed upon and implemented IEP before the dispute giving rise to the instant due process hearing request arose. "Stay Put" is meant to preserve the status quo until the dispute can be resolved either through mediation or a due process hearing. Here, on the day of the filing of the due process complaint, Student was served by an NPA aide for the full school day and received behavior supervision from an NPA. A transition of service providers was in process, but had not been completed. A dispute arose over the transition of the services to District providers and that dispute is the subject of a pending due process complaint. While District asserts that the transition process was meant to be temporary and had a set ending date, the facts alleged by both parties indicate otherwise. Specifically, the May 4, 2011 IEP states that the parties would reconvene to discuss the need for additional transition time. In fact, the parties did convene on September 27, 2011 and failed to reach agreement. Cessation of the NPA aide and supervision services would does not preserve the status quo. For this reason, Student's motion for stay put is granted.<sup>2</sup>

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<sup>2</sup> This order on Motion for Stay Put is not intended to be determinative of any contract issues that may exist between the parties as a result of the May 20, 2011 settlement agreement.

ORDER

1. Student's Motion for Stay Put is granted.
2. Student's Stay put placement is at John Muir School, Specialized Academic Instruction for 150 minutes per day, APE in a small group twice a week for 30 minutes each session, three individual sessions of occupational therapy per week for thirty minutes per session, one 50 minute clinic based occupational therapy session per week, three twenty five minute sessions of speech and language therapy per week, an NPA aide for the entire school day and two hours per week of NPA behavior supervision.

Dated: October 14, 2011

/s/

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GLYNDA B GOMEZ  
Administrative Law Judge  
Office of Administrative Hearings