

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PITTSBURG UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011100230

ORDER GRANTING MOTION FOR
STAY PUT

On October 10, 2011, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings a Due Process Request (complaint) naming the Pittsburg Unified School District (District) as respondent.

On December 20, 2011, Student filed a motion for stay put. Student contends that the last agreed and implemented Individualized Education Program (IEP) was the IEP dated June 15, 2010.

On December 22, 2011, the District filed an opposition on the ground that the last agreed and implemented IEP was an amendment to the June 15, 2010 IEP dated September 3, 2010.

On December 27, 2011, Student filed a 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)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.)

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

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 that stay put should be that listed in the June 15, 2010 IEP which consisted of five hours per week of home hospital instruction; one and a half hours per week of speech and language services (SL); and one and a half hours per week of occupational therapy (OT).

The District contends that stay put would be the September 3, 2010 IEP amendment which was signed by Parent. The amendment provided Student with five hours per week of home hospital instruction and thirty minutes per week of SL.

In reviewing the June 15, 2010 IEP which was attached as an exhibit to the motion, Parent gave unconditioned consent to the IEP “as written.” In reviewing the IEP amendment of September 3, 2010, it is apparent that Parent did not consent to the IEP. The notes reflect Parent’s comments thusly:

I do not agree to the number of hours. It is not enough hours of education offered. Dr. Cortez’s letter states a period of time longer than 1 week for in home instruction. I would like [Student’s] in home teacher to be a certified special education instructor. This plan lacks the occupational therapy that is already in place.”

Parent commented on the document the reason that she signed:

I am not in agreement. Debbie² said I had to sign or she would not allow any home instructor that means to me that Debbie Daley does not intend to provide free education to my clinically disabled child unless I agree to a severe cut in service.”³

Thus, Parent did not agree to the September 3, 2010 IEP amendment as Parent signed the amendment under duress. The last agreed to and implemented IEP is that of June 15, 2010.

² “Debbie” refers to Deborah Daley, the District’s special education director.

³ A copy of the September 3, 2010 amendment is attached as an exhibit to the opposition.

ORDER

Student's motion for stay put is granted. The District shall provide to Student five hours per week of home hospital instruction; one and a half hours per week of speech and language services; and one and a half hours per week of occupational therapy.

Dated: December 27, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings