

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011110513

ORDER GRANTING MOTION FOR
STAY PUT

On November 18, 2011, Student filed a motion for stay put which was supported by a declaration under penalty of perjury and authenticated exhibits. District did not file an opposition. For the reasons discussed below, the motion is granted.

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.)

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 and District entered into a due process settlement agreement on January 6, 2011, which included provisions for stay put in the event of a dispute at Student’s next review IEP. In particular, the settlement agreement provided that, in the event of a dispute regarding placement or services, stay put shall be the placement and services offered in Student’s October 13, 2010 IEP, including 60 minutes per week of speech and language (SL) services provided by a non-public agency (NPA).

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

A telephonic implementation IEP took place on February 2, 2011, during which an IEP was developed and signed by Student's mother. The IEP specifically referred to and incorporated the provisions of the settlement agreement relating to stay put. The February 2, 2011 IEP, in the "additional discussion" section, also provided that Student shall receive a block of 38 hours of SL services, relating back to Student's October 13, 2010 IEP, to be provided by an NPA.

Student asserts in her stay put motion that the NPA has now terminated and refused to provide additional SL services because the block of 38 hours has been completed. As a result, Student filed this motion. Student has not asserted that District agrees with the NPA's position, or disputes Student's right under the settlement agreement and February 2, 2011 IEP to continue NPA SL services 1 hour a week. Nevertheless, the evidence offered by Student establishes that, without a stay put order, the NPA appears to be unwilling to continue providing the one hour of SL services called for as stay put in the implementation IEP. Therefore, Student's motion will be granted.

ORDER

Student's motion is granted. Student's stay put is the placement and services provided for in Student's February 2, 2011 IEP, including the incorporated stay put provisions of the January 6, 2011 settlement agreement. In particular, Student shall be entitled to receive one hour of NPA speech services per week at District expense until this due process matter has been resolved.

Dated: November 30, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings