

EFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MARTINEZ UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2016040097

ORDER GRANTING MOTION FOR  
STAY PUT

On March 31, 2016, Student filed a motion for stay put. Student requested that one provision of her individualized education program dated March 4, 2014 be maintained pending this matter’s resolution. The provision states that Student will receive individualized language arts instruction in a 1:1 format, with a special education credentialed teacher, at a rate of 250 minutes per week, during Student’s Language Arts Support Class at Alhambra High School. Martinez Unified School District did not respond to the motion.

APPLICABLE LAW

A special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); Ed. Code, §§ 56505, subd. (d), 48915.5.) Stay put operates automatically upon due process filing. (See *Casey K. v. St. Anne Community High School District No. 302* (7th Cir. 1998) 400 F.3d 508, 511.) 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 Board of Education* (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, Sec. 3042.)

DISCUSSION

Student’s last agreed upon and implemented IEP dated March 4, 2014 provided that Student’s intensive individual services in the area of language arts will be provided by the district of service on an individual basis at the frequency of “250 min 1 x Totaling: 250 min

served Weekly”. The comments state the minutes will be spread throughout the week in multiple sessions.

The settlement agreement entered into between the parties on July 14, 2014 contained the following paragraph regarding stay put:

“ E. Stay-Put: In the event of a dispute regarding Student’s placement and services either (1) after the \$15,000 for Mr. Hauskens referenced in II.B. of this Agreement has been exhausted, or (2) after the 2014-2015 school year has concluded, then the March 4, 2014 IEP (including District provided 1:1 services, not Mr. Hauskens’ services) constitutes Student’s stay-put placement until the Parents next consent to a special education placemen, program, and services for Student.”

On February 25, 2015, Martinez proposed to end Student’s intensive individual services by June 12, 2015. Parents rejected this offer of FAPE. Parents asked Martinez to restore the intensive individualized service to the February IEP and refused to sign the IEP otherwise. Although the parties discussed various other options after February 2015 for providing Student with her individualized language arts instruction, the February 25, 2015 FAPE offer was never signed or implemented. Parents never agreed to a change in Student’s individualized language arts instruction.

The purpose of stay put is to maintain the last agreed upon placement of a student, including services the student is receiving, pursuant to her last signed and implemented IEP when a dispute arises concerning placement and services. Unless the parties agree to a different placement, the stay put placement will remain the student’s placement until there has been a final adjudication of the due process complaint.

In this case Student’s last signed and implemented IEP on March 4, 2014 provided Student with intensive individual services at a rate of 250 minutes per week to be taught by a special education credentialed teacher. Martinez did not provide any authority permitting the stay put placement and services to change. Accordingly, Student’s stay put placement shall be the intensive individual services as set forth in the March 4, 2014 IEP.

## ORDER

1. Student’s motion for stay put is granted.
2. Student’s stay put placement and services is the one identified in the IEP dated March 4, 2014 and calls for Student to be provided intensive individual services at a rate of 250 minutes per week to be taught by a special education credentialed teacher.

DATE: April 15, 2016

/s/

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CHERYL CARLSON  
Administrative Law Judge  
Office of Administrative Hearings