

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FULLERTON ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2010120918

ORDER GRANTING MOTION FOR
STAY PUT

On December 22, 2010, Student filed a Request for Due Process Hearing (complaint) against the Fullerton Elementary School District (District). Student also filed a motion for stay put on December 22, 2010, contending that his last agreed-upon and implemented individualized education program (IEP) was dated October 27, 2009, and that this IEP provided speech therapy and behavior services from non-public agencies (NPAs). On December 29, 2010, the Office of Administrative Hearings (OAH) denied Student's motion, without prejudice, because Student did not include a copy of the October 27, 2009 IEP.

On January 6, 2011, Student re-filed the motion for stay put, and included a copy of relevant portions of the October 27, 2009 IEP. On January 7, 2011, the District filed an opposition on the grounds that stay put did not require the District to provide speech therapy and behavior services through an NPA. On January 7, 2011, Student filed a reply brief.

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); 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 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

At issue in Student's motion for stay put is whether the District needs to continue providing speech therapy and behavior intervention services through an NPA during the pendency of this dispute, or may the District provide these services through District personnel. The October 27, 2009 IEP states that Student will receive 100 minutes a week of speech therapy and 360 minutes a week of behavior intervention services, along with 240 minutes a month of program supervision, and that these services would be provided by specified NPAs.

The District contends that Parents did not consent to the October 27, 2009 IEP, but provides no documentary evidence to support its position, or that the District did not implement the October 27, 2009 IEP as alleged by Student. Student provided a copy of Parents' consent to the IEP. As to the provider of service, there is no dispute that the October 27, 2009 IEP stated that Student was to receive speech therapy and behavior intervention services through the specified NPAs, and he did receive these services from the specified NPAs. The NPAs were a component of Student's educational placement, and the change from NPA providers to District personnel constituted a change in Student's program. (*Student v. Jefferson Elementary School District* (2007) Cal.Ofc.Admin.Hrngs. Case No. 2007020606.) Accordingly, Student's motion for stay put is granted.

ORDER

Student's motion for stay put is granted. The District shall provide Student with speech therapy and behavior intervention services as specified in the October 27, 2009 IEP by the specified NPAs.

Dated: January 19, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings