

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MENLO PARK CITY ELEMENTARY
SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2009020259

ORDER GRANTING MOTION FOR
STAY PUT

On February 06, 2009, Menlo Park City School District filed a motion for stay put. Student filed no opposition District's stay put motion.

Student is a 12 year-old fifth grader who is eligible for special education under the category of autism. On August 29, 2008, Student's parents consented to an IEP that provided Student with the following: (1) 54% of time in a general education environment, (2) 150 minutes per day of specialized academic instruction in the school's learning center, (2) 75 minutes per week of speech and language services, and (3) 45 minutes per week of occupational therapy. The District implemented the August 29, 2008 IEP.

On November 14, 2008, the IEP team convened and the District offered to continue Student's services at the same level as those set forth in Student's August 29, 2008 IEP. Student's parents did not consent to the November 14, 2008 IEP. The IEP team convened again on January 8, 2009 to further discuss the District's offer, but Student's parents continued to withhold their consent. Consequently, the District filed a request for due process hearing on February 6, 2009, and now requests an Order of Stay Put directing that Student's current educational placement be implemented during the pendency of the dispute.

The District contends that the August 29, 2008 IEP is the last agreed-upon and implemented IEP. As such, Student should continue to receive the services set forth in the August 29, 2008 IEP until this matter is adjudicated. The District is correct.

Under federal and California special education 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); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, a pupil's 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 the instant matter, the August 29, 2008 IEP was the last agreed-upon IEP implemented prior to the dispute. As such, it remains, for the purposes of stay put, Student's current educational placement. The District must, therefore, maintain the status quo of Student's educational program, and continue to offer Student the placement and services set forth in Student's August 29, 2008 IEP.

ORDER

The District's motion for stay put is granted. Student's operative IEP for the purposes of stay put is the August 29, 2008 IEP.

Dated: February 24, 2009

/s/

CARLA L GARRETT
Administrative Law Judge
Office of Administrative Hearings