

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN on behalf of STUDENT,

v.

LOS ANGELES CO. OFFICE OF
EDUCATION.

OAH CASE NO. 2009070281

ORDER DENYING MOTION FOR
STAY PUT

INTRODUCTION

On July 7, 2009, Student filed a Request for Mediation and Due Process Hearing (Complaint) alleging, in relevant part, that: Student is a fifteen year old boy, eligible for Special Education Services under the primary disability of Emotionally Disturbed (ED). Since fall 2008, Student has been enrolled at the Los Angeles County Office of Education (LACOE) as a student attending the Central Principal Administrative Unit of the Central Juvenile Hall. While in detention under the temporary custody of the Los Angeles County Probation Department; on June 22, 2009, an individualized education program (IEP) was agreed by all IEP team members, which included Student's Aunt, who, as holder of Student's education rights.¹ (June 22, 2009 IEP). The June 22, 2009 IEP provided for out-of-state placement of Student, at the expense of LACOE, at an approved, non-public residential treatment center (RTC) known as Devereux, which all agreed would be the only suitable placement for Student, given his extreme ED. The complaint goes on to allege that LACOE failed to implement the June 22, 2009 IEP, thereby denying Student a free and appropriate public education (FAPE), in that LACOE had not placed student at Devereux, nor entered a funding contract with Devereux to facilitate the placement.

On July 9, 2009, Student filed a motion for stay put (Stay Put Motion) which included an attached copy of the June 22, 2009 IEP.² Student's position was that following Aunt's

¹ Throughout the documents related to Student's motion, Aunt has been referred to variously as someone who has acted as Student's parent or guardian and as having Student's education rights. However, no evidence has been provided to establish when or how Aunt acquired Student's educational rights, or the authority to act as Student's parent or guardian (e.g., no agreement or Letters of Guardianship, and no agreement or court order assigning Student's educational rights). For the limited purposes of this Order only, Aunt's status as a guardian and holder of Student's educational rights will be rebuttably presumed.

² Student's attorney, Tania Whiteleather, has authenticated Student's copy of the June 22, 2009 IEP by her July 9, 2009, written declaration, under penalty of perjury (Whiteleather Declaration). LACOE has not challenged the authenticity of Student's copy, which is therefore accepted as evidence.

consent to the June 22, 2009 IEP, LACOE offered Devereux a funding contract for Student's placement for only an approximately two month period ending August 31, 2009. Devereux rejected Student's placement because Devereux required a minimum one school year contractual commitment. Student argued that LACOE, as Student's local educational authority (LEA) is obligated to immediately offer Devereux a full school year funding contract to facilitate the immediate implementation of the June 22, 2009 IEP, including Student's placement at Devereux. Student's Stay Put Motion seeks an order against LACOE for exactly that: an immediate, year-long funding commitment to, and placement of Student at, Devereux.

On July 14, 2009, Los Angeles County Office of Education (LACOE) filed an opposition to Student's Stay Put Motion (LACOE's Opposition). LACOE argued that it is not responsible for providing funding to Devereux beyond that agreed in the June 22, 2009 IEP, which LACOE pointed out was June 23, 2009 through August 31, 2009.

Further, LACOE argued that placement of Student at Devereux would require the approval of DMH, which will not occur until presently outstanding concerns and unsatisfied conditions are resolved. LACOE pointed out that the June 22, 2009 IEP expressly stated these items, which, by her sworn declaration of July 13, 2009, LACOE's attorney, Constance M. Taylor, testified have not been resolved. (Taylor Declaration) Those issues are: the Department of Children and Family Services (DCFS) must keep a case open for Student; a determination must be made as to who will authorize medication and treatment for Student, not covered by Medi-Cal, as Student's guardian declined; a determination must be made as to who will pay for incidental expenses of Student's placement at a residential treatment center, as Student's guardian declined; a determination must be made as to who will transport Student to Devereux RTC; a "home of parent" order must be obtained from the Juvenile Court, establishing Student's residence for education purposes as Los Angeles Unified School District (LAUSD); an IEP team meeting, including LAUSD as a member, must be held to determine funding for the Devereux RTC program, prior to commencing placement.

Finally, LACOE argued that because Student has acknowledged the June 22, 2009 IEP has never been implemented, the parties must look to the last agreed upon and implemented placement and services before the June 22, 2009 IEP. LACOE presented a copy of Student's August 8, 2008 IEP from LAUSD as the most recent agreed placement and represented that comparable substantive provisions of the August 8, 2008 IEP, excepting placement at non-public school, had been implemented by LACOE at the juvenile court school.

On July 14, 2009, Student filed a Reply to LACOE's Opposition (Student's Reply). Student's reply did not contradict or challenge LACOE's representations regarding the unsatisfied conditions precedent to placement of Student at Devereux.

APPLICABLE LAW

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, 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.) However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64; *D. v. Ambach* (2nd Cir. 1989) 904, 907.)

DISCUSSION

Student argues that the June 22, 2009 IEP is the currently agreed IEP and that its terms should be enforced. However, Student then also argues that this IEP has never been implemented. In fact, it is the failure to implement this IEP that is the primary basis of Student's Stay Put Motion. Student has not challenged LACOE's affirmative representation that those conditions have not been satisfied, waived or otherwise resolved.

As explained by the Court in *Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625, when an IEP has been agreed, but not implemented, it is the prior agreed and implemented IEP that is the basis for stay put. In this case, the June 22, 2009 IEP has not been agreed upon and implemented..

ORDER

Student's motion seeking to have the June 22, 2009 IEP determined to be Student's stay put is denied.

Dated: July 20, 2009

/s/

STEVEN CHARLES SMITH
Administrative Law Judge
Office of Administrative Hearings