BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT on behalf of STUDENT, v. LAS LOMITAS ELEMENTARY SCHOOL DISTRICT.	OAH CASE NO. 2009080175 ORDER DENYING MOTION FOR STAY PUT

On August 6, 2009, Parents, on behalf of Student, filed a Petition for Due Process Hearing and a separate Motion for Stay Put (with exhibit). On August 10, 2009, the Office of Administrative Hearings (OAH) issued a Scheduling Order, setting a mediation for September 10, 2009, and a due process hearing for September 29, 2009.

On August 12, 2009, respondent Las Lomitas Elementary School District (District) filed notice that it would be represented by the San Mateo County Counsel. On August 13, 2009, Deputy County Counsel Kathryn E. Alberti filed a copy of her letter to Student's counsel, confirming their telephone conversation regarding the complaint's issues of placement and related service.

The District did not file an opposition or response to Student's motion for stay put.

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

The motion states that Student transferred into the District and was receiving services pursuant to a prior IEP of March 14, 2008, while the District completed its assessments. After the District's assessments were finished, an IEP was held on October 29, 2008. (Student attaches a copy of the October 2008 IEP as an exhibit to the motion.)

Student states that the District offered placement at Associated Learning & Language Specialists (ALLS), along with related services in speech and language, occupational therapy and physical therapy. Parents signed the October IEP on November 10, 2008, and Student began attending ALLS and receiving the associated services.

The IEP team met on March 9, April 1, and April 22, 2009, to discuss Student. (March 2009 IEP.) The IEP team recommended placement at the San Mateo County Office of Education preschool program (SMCOE Preschool). Parents disagreed and did not sign or otherwise consent to the March 2009 IEP.

District refused to continue funding of Student's placement at ALLS after the end of the school year on June 5, 2009. Parents thereafter paid for Student's placement at ALLS and related services during the extended school year.

Student asserts that the October 2008 IEP is the last agreed upon and implemented IEP and that ALLS is the current educational placement for purposes of stay put. Student claims that District is therefore responsible for all costs associated with such placement and services since the end of the school year on June 5, 2009.

The October 2008 IEP states that the IEP team believed that the SMCOE Preschool was the appropriate program. The IEP then reads:

> "However, in the interest of exploring the Parents' belief in the appropriateness of the ALLS Transition Class program, the District has consented to a 30 calendar day diagnostic placement in the ALLS Transition Program. At the conclusion of this time, the IEP Team will reconvene to review the determination of appropriateness of placement." (Exhibit, pp.18-19.)

The October 2008 IEP specifically states that the ALLS placement was a diagnostic placement and was limited to 30 days. Also, the IEP does not include extended school year as part of the placement or related services. Therefore, on its face, the October 2008 IEP defines ALLS as a temporary placement.

The October 2008 IEP states that the IEP team would meet at the conclusion of the 30-day diagnostic placement at ALLS. The motion does not include any discussion as to what happened at the diagnostic placement's conclusion nor why the District continued to fund the placement and related services at ALLS until the end of the school year.

Accordingly, the motion to stay put is denied because the ALLS placement by the October 2008 IEP was a temporary placement

ORDER

1. Student's motion for stay put is denied.

Dated: August 25, 2009

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings