BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT on behalf of STUDENT, v. OAK GROVE ELEMENTARY SCHOOL DISTRICT.	OAH CASE NO. 2009101236 ORDER FOR SUPPLEMENTAL DOCUMENTS

On, October 21, 2009, Parent, on behalf of Student filed a Request for Due Process Hearing[1] (compliant), against the Oak Grove Elementary School District (District). Within the complaint, Student made a motion for stay put. On October 28, 2009, Rod L. Levin, attorney for District, filed an opposition to Student's motion. Additional information is required before a ruling may be made on the pleadings.

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.)

California Code of Regulations, title 5, section 3042, defines "educational placement" 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.

DISCUSSION

The issue to be determined for stay put concern's Student's Applied Behavior Analysis (ABA) services. District has submitted the declaration of Risa Quon, which states

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

that the Student's parents were given written notice of District's intention to terminate services with the prior ABA provider for Student. District states that it had a contract with Student's ABA provider to serve two of its students. It further asserts that it is not satisfied with the services of the ABA provider. However, no specific information as to dissatisfaction with this Student's services is provided. Neither party has provided documentation setting out the precise last agreed upon and implemented placement for Student.

Stay put is determined on a case-by-case basis. The Office of Administrative Hearings (OAH) does not have sufficient information from which to discern the precise last agreed upon and implemented placement, or to discern how those services may no longer be possible or practicable for this particular Student. (*Ms. S. ex rel. G. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115, 1133-35.)

ORDER

Within five days of this order, each party shall provide OAH a copy of the last agreed upon and implemented IEP, or other documentation, if the last agreed upon and implemented placement is not contained in an IEP. Each party shall provide further documentation regarding how the ABA provider has failed to meet its obligations to this Student.

It is so ordered.

Dated: November 2, 2009

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings