

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2010020428

ORDER ON MOTION FOR STAY PUT

On February 16, 2010, District filed this matter against Student seeking a declaration that it offered Student a free appropriate public education (FAPE) for the 2009 extended school year and 2009-2010 regular school year. On March 5, 2010, Student filed an Amended Motion for Stay Put (Motion). Student contends that he is entitled to stay put because after the District filed its request for due process, District informed Student that a new NPA would be implementing the ABA component of Student's IEP. Student contends that under stay put, he should continue to receive services from PCFA, his current provider.

On March 8, 2010, District opposed the Motion. District contends that because no specific ABA provider is referenced in the IEP that is currently being implemented, Student is not entitled to continued services from PCFA. Instead, District contends that it has met its stay put obligations so long as it provides NPA ABA services in the frequency and duration specified in the IEP. In support of its opposition, District presented evidence that in IEP offers on November 13, 2009 and December 9, 2009, Student was offered ABA services by an "NPA" at both home and school without reference to a particular provider. District also presented evidence that on January 22, 2010, Student's mother consented to the IEP in part, by agreeing to "one company to provide BCBA ABA supervision at home and school." As discussed below, the District is correct, such that the Motion is denied.

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.)

Here, none of the three operative IEP documents can be interpreted as requiring the District to provide ABA services from PCFA exclusively. Instead, the IEPs, when read together, demonstrate that Student's parent has consented to the provision of ABA services at home and at school, from a single NPA provider with BCBA supervision. This conclusion is supported by the service pages in the November 13, 2009 and December 9, 2009, IEPs, neither of which refer to ABA services being provided by a specific agency. The November 13, 2009 IEP notes contain the following statement, "PCFA, Eric Grasso, will utilize Dr. Power's report to support [Student's] program at the home and school." However, this note does not state that ABA services will be provided by PCFA exclusively. Instead, when read with the failure to list PCFA on the service pages, it can only be interpreted as a notation that the then-current ABA provider would consider a recent assessment when providing services. Neither the November 13, 2009 or December 9, 2009 IEPs were signed by Student's parent. Instead, the only signed consent is the January 22, 2010 limited consent form, which contains no reference to a particular ABA provider.

As of the date of the Motion, there is no evidence that District is not providing ABA services from an NPA with BCBA supervision in the frequency and duration specified in the IEPs. Accordingly, because PCFA is not specified in the IEP documents, the Motion must be denied.

ORDER

The Amended Motion for Stay Put is denied.

Dated: March 16, 2010

/s/

RICHARD T. BREEN

Administrative Law Judge

Office of Administrative Hearings