

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011020071

ORDER DENYING MOTION FOR  
STAY PUT

On February 2, 2011, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint). On March 11, 2011, Student filed a motion for stay put. On March 16, 2011, the District filed an opposition to the motion. On March 17, 2011, Student filed a reply to the District's opposition. The area of dispute is whether certain specified services were being provided as compensatory education as part of a settlement entered into by the parties in a previous filed due process matter (OAH Case No. 2010071039) or whether they were part of an individualized education program (IEP) dated September 24, 2010. On April 8, 2011, OAH issued an order requesting further information. Student filed a response to the April 8, 2011 order on April 14, 2011.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); 56505, subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

DISCUSSION

In his supplemental filing, Student contends for the first time that the BII and BID services listed in the September 24, 2010 IEP should be considered as stay put. The IEP notes that Student is to receive 20 weekly hours non-public agency (NPA) BII with four hours monthly of BID services from the NPA as compensatory services pursuant to a settlement in a previous case (OAH Case Number 2010071039). Student contends that the nature of these services was changed when the IEP team adopted goal number three to the

IEP: “During unstructured time, [Student] will play in his assigned area with his classmates 3 out of 4 trials with 85% accuracy.” This goal will be measured through observation.

The District contends that the services are not stay put since the terms of the settlement agreement and the IEP itself clearly state that the services are not to be considered stay put. The settlement agreement states (page 2): The Parties agree that the compensatory NPA BII/BID services are not part of a settlement of disputed claims and issues and shall not be considered ‘stay put’ under state and federal special education laws.”<sup>1</sup>

The IEP states that the “compensatory speech and OT services are given as a block of 35 hours each and are to be completed prior to August 31, 2011.” (Exhibit “A” to Student’s Response to Order for Supplemental Evidence.) The IEP does provide that Language and Speech services were to be given through a 30 minute consultation by the speech pathologist and teacher so as to generalize skills. The services for Goal Three could be provided through this service.

The last implemented IEP does not include NPA BII/BID services, other than being compensatory per the settlement agreement, and thus Student’s motion is denied. This ruling does not adjudicate the sufficiency of the services provided to Student and whether or not the IEP provides Student with a free appropriate public education.

#### ORDER

Student’s motion for stay put is denied.

Dated: April 29, 2011

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> The settlement agreement was attached to the District’s opposition as Exhibit “A.”