

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAMPBELL UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2011020711

ORDER DENYING MOTION FOR
STAY PUT

On February 28, 2011, Parent, on behalf of Student, filed a request for stay put.¹ On March 3, 2011, Eliza J. McArthur, attorney for the Campbell Union High School District (District), filed a non-opposition and request that Student withdraw his request 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; *Zvi 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 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.)

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.

¹ While Student is represented by counsel, who filed the due process hearing request, Parent, rather than counsel, files motions in this case.

DISCUSSION

Student asserts that he is entitled to one hour per week of audio verbal therapy (AVT) from Sandra Hocker, at Listen and Learn, and four hours of consultation per year from Sandra Hocker, as his stay put services. Student contends that these are set out in the last agreed upon and implement IEP, dated March 2, 2010.

District has pledged by sworn declaration to continue providing services within Student's current educational placement. However, the placement District cites to is contained in the February 8, 2010 IEP, which does not contain the four hours of AVT consultation that Student contends is part of his stay put.

Student did not attach the March 2, 2010 IEP to his motion. However, it is contained in the Student's due process hearing request. The March 2, 2010 IEP is an addendum to the February 8, 2010 IEP and contains an offer of four hours of consultation.

While there may be a lack of clarity in the documents submitted by the parties, it is clear that Student's motion clearly asserts that his stay put services are one hour per week of AVT and four hours per year of consultation, both provided by Sandra Hocker. In response to this motion for stay put, District has pledged to continue providing the stay put services. Accordingly, Student's motion for stay put is denied without prejudice. If the parties have a dispute regarding the consultation service, they may file appropriate motions to seek clarity.

ORDER

Student's motion for stay put is denied without prejudice.

Dated: March 9, 2011

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings