

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIPON UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011030842

ORDER DENYING MOTION FOR  
STAY PUT

On March 16, 2011 the Ripon Unified School District (District) filed a Request for Due Process Hearing (complaint), naming Student. On April 5, 2011, Student made a motion for stay put. On April 8, 2011, the District filed its response and opposition to Student's motion.

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); Ed. Code, §§ 48915.5, 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.)

In California, "specific educational placement" is defined 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. (Cal. Code Regs., tit. 5, § 3042.)

A student is not entitled to the identical services pursuant to his or her IEP when those services are no longer possible or practicable. (*Ms. S. v. Vashon Island* (9th Cir. 2003) 337 F.3d 1115, 1133-1134.) When a student's "current educational placement" becomes unavailable, the local educational agency must provide the student with a similar placement in the interim. (See *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533.)

## DISCUSSION

The parties do not dispute that Student's last agreed upon and implemented educational program is the May 14, 2010 IEP. Student contends that his stay put placement is the placement and services set forth in this IEP, which includes behavior intervention services from Genesis Behavior Center (Genesis), a non public agency (NPA). The District asserts that the District and Genesis mutually agreed to terminate their contract for Genesis to provide services to District students, effective February 17, 2011.

Regarding the question of which NPA should provide the behavior intervention services to Student, Genesis provided this service before and after the May 14, 2010 IEP meeting through February 17, 2011. However, based on the submitted IEP, Student's behavior intervention services were to be provided by "any NPA under contract with the District/SELPA [Special Education Local Plan Area]", and not specifically, by Genesis or any other named NPA. According to the sworn declaration of Susan Harper, District's Coordinator of Student Support Services, and the attached agreement, the District and Genesis agreed on January 25, 2011, to terminate their master contract, effective February 17, 2011. Further, Genesis does not have a contract with the SELPA. The District informed Parents on the contract termination and that another NPA, Learning Solutions, had entered into a contract with the District to provide behavioral intervention services. Student did not establish that the May 14, 2010 IEP required the District to provide behavior intervention services through Genesis or that Genesis and the District could not mutually agree to terminate their service contract. Therefore, the District is entitled to provide the behavior intervention services to Student through another NPA, which has contract with the District or SELPA.

Therefore, for stay put purposes, the District is required to provide the behavior intervention services to Student through an NPA under contract with the District or its SELPA. Because Genesis no longer has a contract with the District or its SELPA, the District may use another NPA under contract to the District or its SELPA. Therefore, Student's request for stay put is denied.

## ORDER

Student's motion for stay put is denied.

Dated: April 12, 2011

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings