

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MORGAN HILL UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011080385

ORDER GRANTING MOTION FOR
STAY PUT

On August 13, 2011, Student filed a motion for stay put, seeking an order granting stay put as to Student’s physical therapy related service. On August 18, 2011, District filed an opposition to the motion. For the reasons discussed below, the motion is granted, as qualified below.

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, § 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.)

However, if a student’s placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student’s “stay put” placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

ANALYSIS

Student’s motion seeks stay put in Student’s current placement with the services as provided for in Student’s April 1, 2010 IEP and October 15, 2010 IEP amendment. Her motion is supported by a declaration from counsel, a copy of the April 1, 2010 IEP, the October 15, 2010 IEP amendment, and correspondence from District withdrawing PT services. Parents consented to the October 15, 2010 IEP amendment, which provided that District would provide one 45-minute session of PT weekly. The October 15, 2010 amendment does not contain any language that specifies that the PT services are temporary or have a finite cut-off date, or that they are not “stay put” in the event of a dispute.

District argues in its opposition that the October 15, 2010 IEP amendment was intended to be a temporary offer of PT services, until Student's next annual IEP. As such, District contends that the PT service should not be stay put. District's opposition is supported by a declaration from District staff member Lisa Atlas, and copies of Student's April 1, 2010 and October 15, 2010 IEPs. In addition, District included a copy of Student's March 10, 2011 IEP, to which Parents consented on May 11, 2011, except for PT services.

Here, as discussed above, nothing about the October 15, 2010 amendment can be interpreted as offering PT on a finite basis. To the contrary, the amendment document can only be read as adding a 45 minute per week PT session to the operative IEP. District's opposition demonstrated that although PT services for purposes of stay put are under the October 15, 2010 amendment IEP, all other aspects of Student's program are governed by the March 10, 2011 and May 11, 2011 IEPs to which Parents consented with the exception of the PT services. Accordingly, Student's "stay put" is the placement, accommodations and services contained within Student's last agreed upon and implemented IEP, which is the March 10, 2011/May 11, 2011 IEP. However, as to PT, stay put is those PT services provided for in the October 15, 2010 IEP amendment.

ORDER

1. Student's motion for stay put is granted.
2. While the due process hearing is pending, Student's PT services shall be as described in the October 15, 2010 IEP amendment.
3. All placements and services other than PT while the due process hearing is pending shall be as described in the May 10-11, 2011 IEP.

Dated: August 23, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings