

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT; BIRMINGHAM
COMMUNITY CHARTER SCHOOL.

OAH CASE NO. 2011080830

ORDER GRANTING MOTION FOR
STAY PUT

On August 22, 2011, Student filed a Request for Due Process Hearing naming Los Angeles Unified School District (District) and Birmingham Community Charter School (Charter) (collectively Respondents). On September 20, 2011, Student filed a motion for stay put. On September 27, 2011, Charter filed an opposition.¹ OAH has received no opposition from District.

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.)

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.)

To determine whether a particular agency is required to provide a related service in the IEP, the entirety of the IEP should be considered, and the manner in which it has been implemented, not just the single page listing the placement and related services. (*Joshua A.*

¹ Charter’s late opposition has been accepted for filing, and considered, over Student’s objection.

ex. rel. Jorge A. v. Rocklin Unified School District (U.S.D.C. E.D. Cal. August 20, 2007) 2007WL2389868, *2-3.)

DISCUSSION

At issue in Student's motion for stay put is whether Respondents must continue providing full-time behavioral intervention and behavioral development (BII and BID) services through the non-public agency (NPA), Center for Autism and Related Services (CARS), during the pendency of this dispute, or may Respondents provide these services through school personnel. Student contends that his past IEPs since 2006, as implemented, all provided BII and BID services through CARS. Respondents' most recent IEP offers, made in IEPs dated March 14, 2011, and May 26, 2011, propose behavioral services to be provided by school personnel; Student contends that Respondents are already providing BII and BID services through school personnel absent parental consent. Student therefore moves for stay put to ensure that CARS remains as the BII and BID provider during the pendency of this dispute.

Charter contends that Student's past IEPs do not specifically name CARS as the provider of his BII and BID services. Charter also contends that its in-house BII and BID provider is superior to CARS personnel.

Student's motion is granted. The evidence overall establishes that Student's prior IEP's, as implemented, utilized CARS as the provider of his BII and BID services, and this is not refuted. Student acknowledges that the most recent agreed to and implemented IEP was dated February 25, 2010, and that this document is not provided with the Motion, as it has not been produced to Student by Respondents. Student therefore relies on the previous IEP, dated March 2, 2009. This document does not name CARS as the BII and BID provider, however the Notes in this IEP's offer of free appropriate public education (FAPE) state that "additional supports" would be a 1:1 aide from an "ind. agency." In the Behavior Support Plan (BSP), this IEP also states that "teacher, BII and BID" would implement Student's behavioral goals, and it named CARS as the agency to coordinate between the BSP and other agency's service plans. Mother's declaration attests that Student had been provided full time BII and BID services with CARS as the provider since 2006. This is not refuted. Also unrefuted is Student's contention that District agrees with Student that CARS should be Student's provider of BII and BID services, for purposes of stay put.

ORDER

While this due process hearing request is pending, Student's stay-put provider of BII and BID services shall be the nonpublic agency, Center for Autism and Related Services.

Dated: September 26, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings