

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012030186

ORDER GRANTING MOTION FOR
STAY PUT

On March 2, 2012, Student filed a motion for stay put against the San Diego Unified School District (District). The District did not file a response.

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.)

DISCUSSION

According to the complaint and motion for stay put, Student’s last agreed-upon and implemented educational program is his November 18, 2010 IEP, which is attached to the motion. Student is medically fragile and requires constant care, monitoring and gastric tube (g-tube) feeding. Student receives the services of a licensed vocational nurse (LVN) through Medi-Cal. According to the November 18, 2010 IEP, Student’s medical care that he needed to attend school was to be provided by the LVN. If the LVN was absent, the school nurse would provide the g-tube feeding and medication. Student attended school with his LVN for

the remainder of the 2010-2011 school year and the first half of the 2011-2012 school year. At the December 7, 2011 and January 11, 2012 IEP team meetings, the District stated that Student no longer required one-to-one assistance through a LVN and proposed that Student's classroom time in his medically and physically challenged classroom be increased from 13 hours a week to 27 hours a week. At the February 8, 2012 IEP team meeting, the District stated that Student's needs could be met through District personnel who are trained and monitored by the school nurse. Parents did not consent to the District's proposed IEP.

The District in the November 18, 2010 IEP noted that Student either required his LVN or the school nurse to provide services for Student to attend school. The District has continued to allow Student to attend school with his LVN pursuant to the November 18, 2010 IEP. Accordingly, Student's last agreed upon and implemented education program, the November 18, 2010, provided for Student to attend school with his LVN, and therefore Student's motion for stay put is granted.

ORDER

Student's motion for stay put is granted. The District shall continue to implement the November 18, 2010 IEP and permit Student's LVN to accompany him to school to provide the previously provided services.

Dated: March 12, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings