

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

BELMONT-REDWOOD SHORES
ELEMENTARY SCHOOL DISTRICT.

OAH CASE NO. 2012030252

ORDER GRANTING IN PART AND
DENYING IN PART STUDENT'S
MOTION FOR STAY PUT

Student filed a request for due process on March 6, 2012, naming the Belmont-Redwood Shores Elementary School District (District). On that same date, he filed a motion for stay put. Student states that his last agreed upon and implemented individualized education program (IEP) is dated May 11, 2010. He contends that his stay put placement, in conformance with his May 11, 2010 IEP, is in a District general education classroom along with 15 hours per week of applied behavioral analysis (ABA) therapy provided by a non-public agency. Student provided a copy of his IEP as support for his motion.

The District filed a reply to Student's motion on March 9, 2012. The District contends that Student's parents did not fully consent to the May 11, 2010 IEP, and therefore it cannot be considered Student's last agreed upon and implemented IEP. The District then states that it agrees to continue to provide Student with 15 hours a week of ABA therapy as requested by Student. The District does not dispute that Student's placement is in a general education Kindergarten classroom.

On March 13, 2012, Student filed a response to the District's reply brief. Student states that he received 15 hours of individual, direct ABA therapy with consult services and monthly meetings in addition to his 15 hours of individual ABA therapy pursuant to his last agreed upon IEP dated May 11, 2010. Student contends that in spite of the District's stated agreement to continue to provide him with 15 hours per week of ABA therapy, Student has been informed by his ABA provider that it will soon start providing him with only 12 hours per week of therapy. Student therefore requests a stay put order for 15 hours per week of ABA therapy along with appropriate consultation/supervisory hours to include monthly one-hour meetings in addition to his 15 hours per week of individual therapy.

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)¹; 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.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 [“stay put” placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability].)

DISCUSSION

The District disputes that Student’s May 11, 2010 IEP was agreed-upon because Student’s parents only gave conditional agreement to it. Parents signed the IEP on May 28, 2010, indicating that they agreed to the IEP except as qualified by a statement they attached to the IEP. That statement indicates that Parents did not agree that the District’s offer of placement and services provided Student with a free appropriate public education. However, Parents agreed to place Student in the classroom program offered by the District. Parents also disputed that Student had met a goal as the District’s speech language pathologist had contended, and Parents pointed out some discrepancies between the notes section of the draft IEP document and the final IEP document they had received from the District. Parents also declined to agree to any decrease in Student’s speech and language therapy. Finally, Parents requested some additional goals be added for Student based upon the California standards for pre-school Students. In all other respects, Parent’s signature on the IEP was agreement to its implementation.

Although the District disputes that Student’s May 11, 2010 IEP was “agreed-upon”, the District fails to state which IEP it has therefore been implementing for Student, if not the May 11 IEP, and how it has been determining which placement and related services to provide to Student. The District provides no declaration in support of its position.

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

It is clear from the services pages (pages 3-4 of 12) of the May 11, 2010 IEP that the District offered Student 900 minutes (15 hours) per week of behavioral intervention services to be provided by a non-public agency contracted by the District. Parents consented to this provision when they signed the IEP on May 28, 2010. Their attached statement does not reference ABA services and therefore there was no condition placed upon them. The District must continue to provide Student with these services during the pendency of the instant due process dispute.

However, Student's request for consultation and supervision hours, along with a monthly one-hour meeting, to support Student's ABA services is not referenced at all in the May 11, 2010 IEP. There is no reference to any of these services on the services pages, no reference to them in any of the notes pages attached to Student's motion, and no reference to them even in Parents' statement attached to the IEP. Student asks for "appropriate" consultation and supervision hours, but offers no support for his contention that these hours are part of his stay put placement, does not define what "appropriate" means, and makes no reference to where these services are indicated on his IEP. Student's request for these hours is therefore denied without prejudice to Student producing persuasive evidence that these hours were part of the District's May 11, 2010 IEP offer.

ORDER

The District shall continue to provide Student with 15 hours per week of individual ABA therapy, provided by a non-public agency, during the pendency of this due process request, or until the parties mutually agree to modify or delete the 15 hours of ABA therapy as a related service for Student.

Dated: March 15, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings