BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.	OAH CASE NO. 2012050089 ORDER PARTIALLY GRANTING MOTION FOR STAY PUT

On April 25, 2012, Student filed a motion for stay put concurrently with his complaint, which attached copies of Student's March 3, 2011 individualized education plan (IEP), to which Mother partially consented. On May 2, 2012, District filed an opposition. For the reasons discussed below, the motion is granted in part, and denied in part.

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.)

DISCUSSION AND ORDER

Here, Student filed his motion for stay put concurrent with his request for mediation and due process (complaint), which included a copy of IEP team meeting notes, dated March 3, 2011. Student currently attends San Diego Academy (SDA). He seeks placement at SDA or Home Program services as stay put with related services including transportation.

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

District's March 3, 2011 offer of a free appropriate education (FAPE) included placement in a special day class in a mutually agreeable non-public school (NPS); or, if no agreeable NPS is found, then four periods per day of special day class in the Transitional Alternative Program (TAP) and La Costa Canyon High School, with two periods of mainstreaming until he can be enrolled in an NPS. The offer included speech and language services 90 minutes per week, vision therapy (VT) 60 minutes per week until "previously agreed sessions have been completed" and 24 additional hours authorized at "the last IEP meeting: adaptive physical education goals and services 140 minutes a week; physical therapy (PT) 30 minutes a week with 30 minutes a month of consultation; occupational therapy (OT) goals and services 30 minutes a week with 30 minutes of month of consultation; 3 hours a day of "special circumstance instructional assistant;" extended school year through June 30, 2011, and transportation. The IEP provides that, once an NPS is selected, the IEP team would meet and implement the selected placement.

The notes section of the IEP states that District did not agree to Mother's preferred placement, which was a combination of Encinitas Learning Academy (ELA) and San Dieguito Academy (SDA) because these placements were not appropriate and could not be implemented in combination.

Mother signed the IEP on June 15, 2011, but did not agree to the District's offered placement. Instead, she handwrote that the she only would agree to either an NPS placement per the IEP (which does not appear to have happened based on the request in the stay put motion) or placement in a "hybrid" program of ELA and SDA. Mother also handwrote that she agreed to the OT, PT, and VT services.

Based on the partial consent to the IEP, Parent did not consent to the District's offer of placement, but instead inserted her own proposed alternative placement. Therefore, Student is not entitled to stay put as to placement. However, Student is entitled to stay put for those services offered in the March 3, 2011 IEP that Mother consented to, namely OT, PT, and VT.

ORDER

1. Student's stay put motion as to placement is denied.

2. While this due process hearing request is pending, District shall implement the OT, PT, and VT services offered in the March 3, 2011 IEP and consented to by Mother.

Dated: May 2, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings