

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012090160

ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
STAY PUT

On September 6, 2012, Student filed a motion for stay put with the Office of Administrative Hearings (OAH) against the San Juan Unified School District (District). On September 10, 2012, the District filed an opposition to the motion.

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.)

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.)

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.)

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

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old IEP as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel G v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134.)

DISCUSSION

Student contends that her last agreed upon and implemented educational program consists of portions of Student's May 11 and 22, 2012 IEP's to which Mother provided written consent, and the District implemented. These include speech and language therapy to be provided by a non-public agency, two hours a week of physical therapy provided by Easter Seals and eight hours a week of private tutoring that the District reimburses Parent. Further, Student contends that the 10 hours a week of home instruction that the District had provided Student after her surgery should be provided at Rio Americano High School (Rio Americano) because the District failed to implement provisions of Student's IEP for her to safely attend Rio Americano. The District does not dispute Student's stay put request for speech and language therapy, physical therapy and reimbursement for private tutoring. However, the District asserts that Parent never consented to District's placement offer for the 2012-2013 school year, and therefore stay put is 10 hours a week of home instruction.

Student has cerebral palsy and a history of missing extended periods of school due to surgeries related to her disability. Student moved into the District at the start of the 2010-2011 school year from the Coronado Unified School District. Student did not attend a District school due to a dispute over the District's IEP offer. Student then enrolled and attended a charter school within the Sacramento Unified School District until January 2012, when she returned to the District. The District held IEP team meetings in February and May 2012. Student did not attend a District school between the IEP team meetings as she was in the San Francisco Bay Area for surgery. She returned to the District in May 2012, but was not physically able to attend school for the remainder of the school year and extended school year.

At the May 11 and 22, 2012 IEP team meetings, the District offered to provide educational services to Student while she was at home, and then for Student to attend Rio Americano at the start of the 2012-2013 school year. Parent agreed to the home-hospital instruction after the May 11, 2012 IEP team meeting.² As to the May 22, 2012 IEP, Parent provided written consent in June 2012 by handwriting areas of consent on the IEP document.

² While Parent only agreed to the provision home-hospital instruction through August 15, 2012, the District makes no argument that home-hospital instruction is not stay put as a temporary placement and that Student must attend Rio Americano pursuant to its May 22, 2012 IEP offer.

Parent also made changes to the District's IEP offer, especially as to conditions of Student's attendance at Rio Americano, which the District did not agree to implement.

Accordingly, there is no last agreed-upon and implemented educational program between the District and Student as to her attendance at Rio Americano. As to any other agreed upon and implemented educational program for Student to attend a school campus that may have existed between Student and the Sacramento Unified School District or Coronado Unified School District, neither party introduced any evidence that such an educational program exists.

Therefore, Student's last agreed upon and implemented educational program consists of speech and language services, 90 minutes a session, four times a month, by a non-public agency, physical therapy, two hours a week by Easter Seals, and parental reimbursement for eight hours a week of private tutoring. However, Student did not establish that the District should provide her with the 10 hours a week of instruction at Rio Americano as her last agreed-upon implemented educational program.

ORDER

1. Student's motion for stay put is granted as to the provision of speech and language services, 90 minutes a session, four times a month, by a non-public agency, physical therapy, two hours a week by Easter Seals, and parental reimbursement for eight hours a week of private tutoring.

2. Student's motion for stay put is denied as to the 10 hours a week of instruction at Rio Americano as the District may continue to provide this instruction to Student in her home.

Dated: September 12, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings