

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CABRILLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012100700

ORDER DENYING MOTION FOR
STAY PUT

On October 29, 2012, Student filed a motion for stay put. On November 2, 2012, District filed an opposition.

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.)

DISCUSSION

Student, a 4-year-old girl eligible for special education and related services due to multiple health and orthopedic impairments, moves for a stay put order providing her with home instruction for three hours per day. Student contends that her last agreed upon IEP of May 29, 2012 was modified on June 15, 2012 to provide for three hours of daily home-based

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

instruction and other services.² No declaration is offered in support of Student's motion. Instead, Student attaches a partial, unsigned copy of a document that purports to be the offer of services in Student's May 29, 2012 IEP. Student's motion is devoid of information on whether, or which, IEP offers of placement and services were implemented.

District opposes, arguing that (i) Student's evidence does not show that Student was offered three hours per day of home instruction, and that (ii) Student's May 29, 2012 IEP was expressly amended on June 15, 2012 to temporarily offer one hour per day of home hospital instruction while Student recovered from surgical complications. District submits the declaration of District's director of special programs, attaching and authenticating the signed complete May 29, 2012 IEP with the June 15, 2012 addendum, which states in pertinent part "District agrees to provide home hospital instruction due to [Student's] recovery period from recent surgery. District agrees to 5 hours per week of direct instructional services one to one during ESY, plus 3 hours per week of consult with Preschool teacher, Speech and Language Therapist and Occupational Therapist."

The complete copy of Student's IEP, as amended June 15, 2012, establishes that Student was offered home hospital instruction on a temporary basis, which will not support home-based instruction as a stay put placement. Further, review of the IEP addendum shows that Student was offered specialized academic instruction for three hours per day during ESY in a "separate classroom in public integrated facility," more specifically identified as "Pre-K special day class; ESY runs for 20 days," and was not offered three hours per day of home-based instruction. Lastly, without admissible evidence of implementation, the last agreed upon and implemented educational placement and services cannot be determined for stay put purposes.

Student's motion for three hours per day of home-based specialized academic instruction is denied. This order is without prejudice to Student bringing a motion for determination of stay put placement and services based upon the last agreed upon and implemented IEP and supported by admissible evidence.

IT IS SO ORDERED.

Dated: November 02, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

² Student's motion seeks only an order for home based instruction, and does not address the other services offered.