

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013110884

ORDER GRANTING MOTION FOR
STAY PUT

On November 25, 2013, Student filed a request for due process (complaint) naming Los Angeles Unified School District (LAUSD). On December 2, 2013, Student filed a motion for stay put. The motion attached an unauthenticated copy of a May 30, 2013 individualized education program (IEP) which was partially illegible, and two declarations under penalty of perjury establishing facts. OAH received no response to the motion from LAUSD. For the reasons discussed below, the motion is granted. Student's stay put shall be the placement and services in the May 30, 2013 IEP, including a full-time one-to-one behavioral aide.

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.)

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

DISCUSSION AND ORDER

Student asserts that LAUSD held an IEP meeting on May 30, 2013, and developed an IEP for Student that included a one-to-one behavioral aide as a related service. Mother signed the IEP on June 10, 2013. In the IEP, Part 4 – Additional Discussion states: “Mother wishes to again request a BII . . . Team members are in agreement for [sic] request.” Part 4 does not specify the number of hours the aide will be provided. The services grid of the IEP is partially illegible, and does not appear to include a one-to-one behavioral aide.

However, Student asserts that LAUSD agreed to provide a one-to-one behavioral aide at the May 30, 2013 IEP meeting, and it belatedly implemented the service during the week of October 7, 2013, when it assigned a behavioral intervention implementation aide to Student. Student does not contend that District failed to implement any other portion of the May 30, 2013 IEP at the beginning of the 2013-2014 school year. Student’s contention is supported by credible evidence that LAUSD implemented the service of a full-time behavioral aide in October 2013, including a letter from Student’s counsel to the assistant principal of Student’s school, in which counsel confirms that the aide is full-time.

Student seeks stay put based on the May 30, 2013 IEP, including the full-time one-to-one behavioral aide. The motion is sufficiently supported by evidence establishing the May 30, 2013 IEP is the last agreed upon and implemented IEP, and the IEP offered and LAUSD implemented the related service of a full-time one-to-one behavioral aide in October 2013.

Accordingly, Student’s stay put during the pendency of this matter shall be the placement and related services in the May 30, 2013 IEP, including a full time one-to-one behavioral aide during school hours.

IT IS SO ORDERED.

Dated: December 10, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings