

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014120033

ORDER GRANTING MOTION FOR
STAY PUT

On January 20, 2015, Student filed a motion for stay put. On January 23, 2015, District filed a partial opposition/partial non-opposition. On January 28, 2015, Student filed a response. As discussed below, the motion is granted.

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); 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, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

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.)

Courts have recognized 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.)

DISCUSSION

Student is a 17 year old young man who is eligible for special education. On May 3, 2013, Student was placed at the Heritage School, a residential treatment center in Utah. The placement was documented by an IEP dated August 20, 2013, providing for a special day class in a structured therapeutic setting, with the following related services: individual counseling for 60 minutes per week; group counseling for 120 minutes per week; family counseling of 120 minutes per month; and psychiatric services for 30 minutes per month. On September 4, 2013, Student suffered a serious medical problem, a bowel perforation, which caused him to be hospitalized for four weeks. Following the hospitalization, Student was discharged from Heritage due to his medical condition and returned home. On February 19, 2014, Student's parent signed an IEP which temporarily placed Student on home instruction for the time period of February 20, 2014 through April 25, 2014. On December 2, 2014, the Office of Administrative Hearings held that the February 19, 2014, IEP did not constitute Student's stay-put placement because it was temporary.

Student's motion for stay put seeks a continuation of the individual, group and family counseling and psychiatric related services that Student received at Heritage pursuant to the August 20, 2013 IEP, although Student is no longer in the residential setting. District's partial opposition/non-opposition does not dispute that Student's August 20, 2013, IEP provided for these related services, and it does not oppose the individual and group counseling services, but states that the family counseling and psychiatric services were only intended to be embedded into the residential setting and cannot otherwise be implemented by District.

District provides no evidence for its contention that the family counseling and psychiatric services cannot be implemented outside the residential setting. The offer of these services in the August 20, 2013, IEP is not in dispute. Therefore Student's motion for stay put is granted. Student's stay put related services shall consist of: individual counseling for 60 minutes per week; group counseling for 120 minutes per week; family counseling of 120 minutes per month; and psychiatric services for 30 minutes per month.

ORDER

Student's motion for stay put is granted. Student's stay put related services shall consist of: individual counseling for 60 minutes per week; group counseling for 120 minutes per week; family counseling of 120 minutes per month; and psychiatric services for 30 minutes per month.

DATE: January 29, 2015

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings