

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

vs.

JEFFERSON ELEMENTARY SCHOOL  
DISTRICT,

Respondent.

OAH CASE NO. N2007020606

**ORDER GRANTING MOTION FOR  
STAY PUT**

On February 21, 2007, the Office of Administrative Hearings (OAH) received a due process hearing complaint and motion for stay put from attorneys F. Richard Ruderman and Erica Wirtz on behalf of Petitioner (Student). On March 5, 2007, OAH received an opposition to the stay put motion from attorneys Laurie E. Reynolds and Shawn Olson Brown on behalf of Respondent Jefferson Elementary School District (District).

APPLICABLE LAW

Under federal and State special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); Ed. Code §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent Sch. Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *Zvi D. v. Gordon Ambach* (2d Cir. 1982) 694 F.2d 904.)

For purposes of stay put, a student's "current educational placement" is typically the placement called for by the student's IEP which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Board of Education* (6th Cir. 1990) 918 F.2d 618, 625.) California Code of Regulations, Title 5, section 3042 defines "educational placement" 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 individualized education program.”

## DISCUSSION

Student asserts that his last agreed-upon and implemented individualized education program (IEP) is dated June 14, 2006. However, Student failed to submit a copy of this IEP attached to his stay put motion. In contrast, the District asserts that the parent never signed consent to the June 14, 2006 IEP, and the copy of that IEP provided by the District contains only the parent’s signature of attendance, not her signed consent to the IEP. Hence, the documents provided indicate that the June 14, 2006 IEP was never agreed upon, and therefore does not constitute the last agreed-upon and implemented placement.

Instead, as the District points out, the last agreed-upon and implemented IEP is dated January 20, 2006. That IEP specified that Pacific Child and Family Associates (PCFA) would provide Student’s applied behavioral analysis (ABA) services as part of the educational program offered by the District.

In a letter dated December 12, 2006, the District’s Director of Special Education notified Student’s parents that the District had chosen a different agency, Consultants for Learning and Autism Support Services (CLASS), to provide Student’s ABA services. Thereafter, Student’s mother notified the District in writing that she did not agree with the proposed change of ABA service providers.

There is no dispute that PCFA was Student’s ABA service provider as part of his last agreed-upon and implemented placement. The District does not contend that this case falls within any exception to stay put. Instead, the District simply asserts that changing the ABA service provider is within its discretion. In support of this contention, the District points to a special education decision which determined that “there is no provision in state or federal law which indicates that parents have the right to choose who shall provide services ... on behalf of the District.” (*Student v. Montebello Unif. Sch. Dist.* (1994) 2 ECLPR 64.) However, that decision addressed a school district’s obligation to offer a free appropriate public education (FAPE), not a school district’s obligation to maintain a student in his last agreed-upon placement for purposes of stay put.

PCFA was a component of Student’s educational placement, and the change to a different ABA provider constituted a change in Student’s program. Pending resolution of this matter, the District shall maintain PCFA as Student’s ABA service provider, unless the parties reach agreement otherwise.

ORDER

1. Student's motion for stay put regarding the ABA service provider is granted.
2. The District shall maintain PCFA as the ABA service provider pursuant to the last agreed-upon and implemented IEP of January 20, 2006.

Dated: March 8, 2007

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SUZANNE B. BROWN  
Administrative Law Judge  
Special Education Division  
Office of Administrative Hearings