

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. 2009100984

ORDER ON MOTION FOR STAY PUT

On December 8, 2009, Student filed a motion requesting a “stay put” order, more specifically requesting that previously-provided behavioral services be continued or reinstated.<sup>1</sup> District filed an Opposition to the motion on December 14, 2009. Student filed a Response to the Opposition on December 15, 2009. As discussed below, stay-put is granted, however the request for continuation and/or reinstatement of private behavioral services (hereafter Services) is denied.<sup>2</sup>

FACTUAL BACKGROUND

Student is a five-year old kindergarten student currently attending Marquez Elementary School. She is eligible for special education as a student with autism. On October 14, 2009 Parents, on behalf of Student, filed a Due Process Hearing Request (complaint), alleging in pertinent part that Student was originally offered full-time Services at Canfield Elementary School. When Parents insisted on Marquez Elementary School, however, District offered only six weeks of support. The complaint’s proposed resolution is continuing Services for the rest of the school year.

Student’s and District’s motion papers flesh out the pertinent facts alleged in the complaint as follows: Student’s prior placements, at a private pre-school and then Canfield Elementary School, included Services since her initial IEP in February 2008. Disputes arose, and the parties engaged in a dispute resolution process (delineated in the papers as “IDR” or “Informal Dispute Resolution”) which resulted in a settlement agreement (Agreement) dated August 18, 2009. The Agreement was signed by District and both Parents, and states:

“For the 2009-2010 school year, the offer of placement will be in the Marquez Autism class with continuation of BIT with current provider for 6 weeks for transition

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<sup>1</sup> As discussed below, it is factually unclear whether services have actually been discontinued or, if so, whether this occurred on October 19, 2009 or December 4, 2009.

<sup>2</sup> The parties’ papers describe the services in question using various undefined acronyms -- “BIT,” “BII,” and “BID.” The meaning of these terms may be in dispute, which is a subject for the due process hearing. For purposes of this motion, it is clear that the issue is behavioral services provided by a nonpublic agency at District expense.

purposes only. This will end on October 19, 2009. BIT services will then be provided with a share of existing resources in the classroom.”

It is unclear when or if District has actually discontinued funding. (The Agreement states October 19 is the end-date, however the motion states that Services were funded until at least December 4, 2009. This may be an issue of fact for the hearing but is irrelevant to the determination of this motion.)

## PARTIES' CONTENTIONS

District argues that the agreed-upon end date for Services is part and parcel of the stay-put placement. District also argues that Services were temporary and that under applicable law, temporary services do not provide the basis for a student's stay put placement.

Student argues that continuing Services are the status quo ante that stay-put is intended to preserve. Student argues that Services were not temporary, because she had received them since her initial IEP in February 2008.

Student also contends that, for various reasons, the Agreement should not control – District misled Parents into signing it; Parents did not understand that they had a right to insist on continuing Services; District offered to change from Canfield to Marquez conditioned upon cessation of Services; Parents agreed but were not fully informed about their rights; the services actually to be offered at Canfield are not as represented by District at the IDR session. Therefore, Student argues that the proper stay put placement includes continued Services.

## APPLICABLE LAW

Under federal and California special education law, a special education student is entitled to remain in his or her “then-current educational placement” pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 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 School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) The statutes and regulations do not define the term “then-current educational placement.” Where, as here, the parties disagree over what constitutes the “then current educational placement” the term must be accorded its plain meaning, connoting preservation of the status quo. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625-6.) For purposes of stay put, the current educational placement refers to the “operative placement actually functioning at the time the dispute first arises.” (*Ibid.*)

## DISCUSSION

The last operative and actually functioning placement, since August 2009 is the Agreement, which explicitly contemplates the cessation of Services. Although the Agreement's validity is in dispute, that is the subject of the due process hearing, the merits of which cannot be litigated by motion. The status quo is the Agreement, which calls for placement in the Marquez Autism class "with continuation of BIT with current provider for 6 weeks for transition purposes only. This will end on October 19, 2009. BIT services will then be provided with a share of existing resources in the classroom." Accordingly, Student's request for stay put is granted under those terms.

## ORDER

Student's stay put placement while this due process hearing request is pending is under the exact terms of the Agreement, i.e., the Marquez Autism class with continuation of BIT with current provider for six weeks for transition purposes only. BIT services will then be provided with a share of existing resources in the classroom.

Dated: December 23, 2009

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings