

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

TWIN RIVERS UNIFIED SCHOOL  
DISTRICTS,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011020609

ORDER DENYING STUDENT'S  
MOTION FOR STAY PUT

On February 17, 2011, District filed a due process hearing request seeking an order that it had offered Student a FAPE in an IEP dated January 28, 2011. On March 1, 2011, Student filed a motion for stay put. Student filed a letter and medical records in support of the motion on March 2, 2011. Student appears to be requesting home hospital instruction as stay put while the due process hearing request is pending. On March 4, 2011, District filed an opposition. In the opposition, District provided evidence that in response to a compliance complaint filed by Student with the California Department of Education (CDE), CDE determined that home hospital instruction was not Student's last agreed-upon IEP placement and that District had been out of compliance by implementing home hospital instruction instead of Student's last agreed upon IEP. District further demonstrated that Student's last agreed-upon IEP placement was in a special day class (SDC) in a public school with two, 30-minute speech therapy sessions per week. District also provided evidence that CDE had found that District was in compliance with its duty to provide speech and language therapy because it had offered to continued to do so at a school site, but parent had declined. On March 7, 2011, Student filed a letter with OAH that reiterated Student's position that Student should be provided with home hospital instruction.

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); 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.) 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

Here, although it appears Student was provided with home hospital instruction by the District at the beginning of the 2010-2011 school year, Student is not entitled to home hospital instruction as a stay put placement. In response to Student's compliance complaint with CDE, in which Student alleged District should be providing home hospital instruction, CDE has found the District to be out of compliance with IDEA by providing home hospital instruction without an agreed-to IEP. Specifically, District was ordered by CDE to obtain consent to an IEP and provide services in accordance with that IEP either by obtaining parent's agreement informally, or by filing a request for a due process hearing. Implicit in CDE's conclusion is an acknowledgement that the home hospital services Student was receiving were temporary unless made Student's placement in an agreed-upon IEP. Under these facts, where CDE has ordered District to implement home hospital instruction only after obtaining an agreed upon IEP or order following a due process hearing, home hospital instruction is not Student's stay put placement.

Similarly, CDE has found that District has complied with its duty to provide Student with speech and language services because at all times District has made these services available at a school site. Accordingly, because District remains willing to provide the speech therapy services called for in Student's last agreed-upon IEP, Student's motion for stay put lacks merit as to the speech therapy services as well.

## ORDER

Student's Motion for Stay Put is denied.

Dated: March 15, 2011

/s/

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RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings