

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALM SPRINGS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011040328

ORDER DENYING MOTION FOR
STAY PUT

On April 7, 2011, Student filed a motion for stay put, which requested that the Palm Springs Unified School District (District) provide speech and language services through a non-public agency (NPA) pursuant to the June 16, 2010 interim individualized educational program (IEP) with the Desert Sands Unified School District (DSUSD). On April 12, 2011, District filed an opposition that opposed Student's motion for stay put because Student was requesting to choose the NPA speech and language provider despite the District's offer to continue the NPA that provided services while Student resided within DSUSD.

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 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.)

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old IEP as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e) (2006); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel G v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134.)

DISCUSSION

The parties do not dispute that Student's last agreed upon and implemented educational program are the portions on the June 16, 2010 interim IEP with DSUSD that Mother provided consent for DSUSD to implement. For purposes of this motion for stay put, the issue concerns the service provider of the speech and language services as the District does not dispute the service level in the June 16, 2010 interim IEP.

Student previously resided within the District and moved into the geographic boundaries of DSUSD in June 2010. DSUSD offered Student an interim IEP with speech and language services to be provided by Judy Morgan, a NPA. Mother consented to this provision of the June 16, 2010 interim IEP and the occupational therapy services, and rejected the remainder of DSUSD's offer. DSUSD implemented the consented to portions of the June 16, 2010 interim IEP, until Student left DSUSD in February 2011 and returned to the District. On February 24, 2011, the District made its own interim IEP offer, which Mother rejected. The District offered to continue speech and language services with Ms. Morgan in its interim IEP. Due to a conflict between Mother and Ms. Morgan, Mother requested that the District provide a different NPA of her choosing to provide speech and language services, which the District rejected. Student did not provide any evidence that Ms. Morgan is not willing to continue the provision of speech and language services.

The June 16, 2010 interim IEP explicitly stated that Student would receive speech and language services from Ms. Morgan, and the District has offered to continue services with Ms. Morgan.¹ Additionally, the District agreed to provide the same level of speech and language services as stated in the June 16, 2010 interim IEP. While Mother may wish for another service provider, she cannot unilateral, through stay put, force the District to provide another provider. Therefore, Student's motion for stay put is denied.

ORDER

Student's motion for stay put is denied.

Dated: April 13, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹ The District's contention that it could choose another service provider is not relevant to this motion because the District agreed to continue with Ms. Morgan.