

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

WESTERN PLACER UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012070220

ORDER DENYING MOTION FOR
STAY PUT

On July 9, 2012, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming the Western Placer Unified School District (District). On July 11, 2012, Student filed a motion for stay put, which requested continuation of Student's home-hospital instruction, as provided in her March 21, 2012 Individualized Education Program (IEP). On July 19, 2012, the District filed an opposition on the ground that the March 21, 2012 IEP only provided for a four-week home-hospital placement. On July 24, 2012, Student submitted a reply brief with attached declarations from Student's Parents.

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

However, 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.)

DISCUSSION

Student contends that her last agreed-upon and implemented educational program was home-hospital instruction that she received from April 18, 2012, through the end of the 2011-2012 school year (SY). The District contends that her last agreed-upon and implemented educational program is the Placer Learning Center (PLC), a non-public school, pursuant to her November 1, 2011 IEP, and that the home-hospital instruction was intended as a temporary placement.

The parties do not dispute that Student attended PLC pursuant to the November 1, 2011 IEP, and that the parties met on March 21, 2012, to discuss issues as to her continued placement because of behavior problems at PLC. At the March 21, 2012 IEP team meeting, the District offered four weeks of home-hospital instruction to permit Parents to visit other possible placements and for the parties to meet on April 16, 2012, to further discuss placement options. The April 16, 2012 IEP team meeting did not occur. According to the March 21, 2012 IEP's both parties provided as evidence, Parents did not consent to this IEP.

While Student asserts in her complaint that the District did not provide the home-hospital instruction called for in March 21, 2012 IEP, the District was not required to provide home-hospital instruction because Parents did not consent to this IEP. The March 21, 2012 IEP's provided by Student and the District do not have Parents' consent box checked. The declaration of Tammy Forrest, District Director of Special Education, established that the District began home-hospital instruction on April 18, 2012, and only intended to continue this instruction through the end of the school year for Parents to look at other placement options, and that Parents permitted the District to provide this instruction. Student did not provide any admissible evidence to contradict that the District's offer of home-hospital instruction was not intended to be a temporary placement. Accordingly, Student's motion for stay put is denied because the District's offer of home-hospital placement was only intended as a temporary placement.

ORDER

Student's motion for stay put is denied as her last agreed-upon and implemented educational program is the November 1, 2011 IEP.

Dated: July 25, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings