BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017080410
v.	ORDER PARTIALLY GRANTING AND PARTIALLY DENYING MOTION FOR STAY PUT
LOS ANGELES UNIFIED SCHOOL DISTRICT.	

On August 4, 2017, Student filed a motion for stay put. District filed opposition on August 10, 2017. Student replied on August 10, 2017.

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)[1]; 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 individualized education program, 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, subd. (a).)

The term "related services" (in California, "designated instruction and services"), includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from education. (20 U.S.C. § 1401(26); Ed. Code, § 56363, subd. (a).)

The IDEA regulations define transportation as: (i) travel to and from school and between schools; (ii) transportation in and around school buildings; and (iii) specialized equipment (such as adapted buses, lifts, and ramps), if required to provide transportation for a child with a disability. (34 C.F.R. § 300.34(c)(16).) Decisions regarding such services are

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

left to the discretion of the IEP team. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46576 (August 14, 2006).) A child's IEP Team is responsible for determining whether transportation between school and other locations is necessary in order for the child to receive FAPE. Likewise, if a child's IEP Team determines that supports or modifications are needed in order for the child to be transported so that the child can receive FAPE, the child must receive the necessary transportation and supports at no cost to the parents. (*Ibid*.)

DISCUSSION

Student's motion seeks an order establishing that Student's stay-put includes three distinct services: First, speech and language services of 60 minutes per week; second, consultative speech and language services of 600 minutes per year; and third, home-to-school transportation with an aide.

It appears from the totality of the filings that the first two issues are no longer in dispute. District agrees that speech and language services of 60 minutes per week are part of Student's stay-put, as requested. Student has withdrawn the request for 600 yearly minutes speech and language consultation. Because these two requests are no longer at issue, the motion for stay put is denied in part, as to them.

The remaining stay-put request is for home-to-school transportation with an aide. Student's last agreed upon and implemented IEP was dated November 30, 2016, as modified by a settlement agreement dated February 1, 2017.[2] The November 30, 2016, IEP offered home-to school transportation but with no mention of an aide. The settlement agreement did not modify this term. Thus, the written terms of the last-agreed upon and implemented IEP did not provide for aide services during transportation.

However, Student argues, and submits a sworn declaration that, in actual fact, District did "always" provide Student with aide services during transportation. Student argues that this as-implemented service should constitute Student's stay-put, even if not explicitly written into Student's IEP.

Student's argument is persuasive. Mother's declaration establishes that the manner in which Student's transportation service was implemented did include aide support even if not explicitly written into the IEP. District does not provide any contrary evidence to dispute these facts. Thus, Student's unique combination of transportation services, as implemented under Student's last-agreed upon IEP, included aide support, and stay-put should so provide during the pendency of this dispute. (See, e.g. *Student v. Los Angeles Unified School Dist.* Cal.Offc.Admin.Hrngs. Case No. 2012100368, October 15, 2012 Order

[2] There was a subsequent IEP team meeting and offer, dated May 19, 2017, as amended, to which Student consented for implementation purposes only, and which is challenged by Student's due process filing. Because not fully consented to, the May 19, 2017 IEP is not Student's last agreed upon and implemented IEP, for purposes of stay put.

Granting Student's Motion for Stay Put ["The exact composition of Student's transportation services are not, and need not necessarily be, stated in Student's IEP…. Student's transportation stay put can be determined by what District actually implemented prior to the filing of the due process hearing request."])

Student's motion for stay-put is granted in part. District shall provide home to school transportation with an aide, pending issuance of a decision in this matter. In all other respects the motion is denied.

ORDER

1. Student's motion for stay put seeking speech and language services of 60 minutes per week, and 600 yearly minutes speech and language consultation is denied.

2. Student's motion for stay-put seeking aide services during home to school transportation is granted.

IT IS SO ORDERED.

DATE: August 15, 2017

DocuSigned by:
June Lehrman
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JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings