BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017081092 ORDER GRANTING MOTION FOR STAY PUT

On August 24, 2017, Parents on behalf of Student filed a Request for Due Process hearing naming Long Beach Unified School District.

On August 29, 2017, Student filed a motion for stay put. On September 1, 2017, District filed an opposition. On September 5, 2017, Student filed a reply.

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 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).)

DISCUSSION

Student request stay put of private nursing care to be provided throughout the school day, including travel to and from school on a bus. Student contends that the April 22, 2016 individualized education program allowed for Student's private nurse, at Parents' discretion pursuant to the IEP, to provide Student's nursing services. Student argues that the IEP has

been implemented for over a year with the private nurse accompanying Student throughout the school day, including bus travel to and from school.

District contends that the April 22, 2016 IEP does not provide for private nursing care for the entire school day or on the bus. District argues that District's school nurse and trained instructional aide are available to provide Student's specialized health care services and District has the right to choose the qualified professionals to provide Student's related services.

The April 22, 2016 IEP states, "[Student] will require a gastrostomy tube feeding at least once during the school day and replacement of gastrostomy tube in case of accidental dislodging. This will be completed by the school nurse, [Student's] private duty nurse per parent disgression [sic], or a trained instructional aid [sic]." The IEP identified gastrostomy tube feeding and breathing treatments as medical needs to be serviced. The April 22, 2017 IEP notes indicate that Parent requested Student's privately funded nurse to accompany Student to school to take care of her medical needs, such as gastrostomy tube feedings and respiratory treatments. District informed Parent that its school nurse and trained instructional aides were available on site daily to assist Student.

Soon after the April 22, 2016 IEP team meeting, Student's private nurse began attending school daily with Student. The nurse helped Student with toileting, hygiene, gastrostomy tube feedings, administering medication, and providing supervision and assistance when needed. District did not question the private nurse's involvement until the IEP team convened on May 4, 2017. At the meeting, District informed Parents that Student's nurse would no longer be able to accompany Student throughout the school day. Instead, District's school nurse or trained instructional aide would be helping Student with gastrostomy tube feeding and administering medication. The May 4, 2017 IEP offer did not provide for a 1:1 health aid throughout the day and provided only 30 minutes of nursing care.

The April 22, 2016 IEP clearly provides that Parent, not District, had the discretion to choose between District's school nurse/trained instructional aide and Student's private nurse, to provide Student's specialized health care services. The April 22, 2016 IEP envisioned that Student will need gastrostomy tube feeding a minimum of once per day, possibly more. The IEP further contemplated that dislodging of the gastrostomy tube may need to be replaced at any point in the school day. Due to the uncertain frequency of feedings, tube replacements and breathing treatments, the IEP also contemplated that a nurse or aide would need to be available throughout the school day to help Student. District's own school nurse and trained instructional aide were available on site daily to assist Student. Therefore, if Parent chose to exercise their discretion to have Student's private nurse attend to Student's health care needs, then the private nurse must also be available on site daily to respond to those needs when they arise, including on the bus to and from school. Parent chose Student's private nurse to provide the nursing services, and the IEP was implemented in that manner for over a year.

Therefore, Student is entitled to stay put of private nursing care throughout the school day, including to and from school on the bus.[1]

ORDER

Student's motion for stay put is granted. Student's private nurse shall accompany Student to school daily, remain throughout the school day, including travel to and from school on the bus until this due process matter is resolved.

DATE: September 18, 2017

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Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings

[1] Nothing in this order shall be construed that District's school nurse or trained instructional aide are not qualified to provide the requested services, just that for purposes of stay put that Student's last agreed upon and implemented educational program permits Parent to choose to use a private nurse.