BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015050922
TORRANCE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015090531 ORDER GRANTING MOTION FOR STAY PUT

On September 16, 2015, Student filed a motion for stay put. On September 21, 2015, District filed an opposition. Student filed a reply on September 21, 2015.

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.)

DISCUSSION

In the 2013-2014 school year, Student had been attending Calle Mayor Middle School, a public integrated facility. Student's annual IEP meeting was convened on March 21, 2014, but continued to May 9, 2014, at Parent's request due to Parent's unavailability on March 21, 2014.

Although the narrative of the May 9, 2014 IEP meeting notes stated that District offered Student placement at an unspecified nonpublic school, the Services page indicated Student would receive Specialized Academic Instruction for one period each day in a "Separate classroom in public integrated facility," occupational therapy consultation in a "Regular classroom/public day school," and all his other related services were going to be provided by the "District of Service." The Services page also listed the school type as "public integrated facility," specifically named the school of attendance as Calle Mayor, and described the "federal setting" as "Regular classroom/Public day school." The IEP indicated that Student would be in the regular education environment 82 percent of the time, and out of the general education environment 18 percent of the time. On May 22, 2014, Parent signed partial consent to the IEP, checking the box marked "I agree with the IEP, with the exception of" and hand wrote in the following blank, "I still haven't looked at the other school for [Student]. I want to have that option still."

Student remained at Calle Mayor for the remainder of the 2013-2014 school year, started the 2014-2015 school year at Calle Mayor, and then attended a nonpublic school in October 2014. Parent withdrew Student from the nonpublic school after less than 30 days and sought to have Student return to Calle Mayor, but District refused to allow Student to attend Calle Mayor. District insisted that Student's negative behaviors at Calle Mayor made it necessary for him to attend a nonpublic school. An IEP team meeting was held on November 24, 2014, and although the meeting notes stated, "The district will offer Home/Hospital services until [Student] is enrolled in school," the Services box again indicated Student would receive Specialized Academic Instruction for one period each day in a "Separate classroom in public integrated facility," occupational therapy consultation in a "Regular classroom/public day school," and all his other related services were going to be provided by the "District of Service."

On December 17, 2014, Parent filed a compliance complaint with the California Department of Education, contending District had failed to implement Student's May 9, 2014 IEP and deprived Student of education since October 3, 2014, when District denied Student attendance at a public school and insisted he attend a nonpublic school. On February 13, 2015, the California Department of Education issued a report concluding that District was out of compliance with Education Code section 56043(i) due to offering a nonpublic school placement, but only listing a public school setting as the location where Student was to receive services, identifying Calle Mayor as the school of attendance, and then refusing to allow Student to attend Calle Mayor. District was ordered to offer Student "two months of compensatory services of all services outlined in the student's May 9, 2014 IEP."

Student's stay-put motion seeks to compel District to provide Student with classroom instruction and the related services listed in the May 9, 2014 IEP at Calle Mayor during the pendency of this case. Student asserts that the May 9, 2014 IEP, with its list of services at a public integrated facility and identification of Student's school of attendance as Calle Mayor, is the last agreed-upon and implemented IEP. District contends that Parent consented to placement at a nonpublic school, although District did not produce any IEP containing Parent's signature consenting to placement at a nonpublic school, or to any educational setting other than a public day school, and specifically Calle Mayor.

Parent's signature on the May 9, 2014 IEP indicates agreement, with the exception of placement at a nonpublic school. Student attended Calle Mayor after Parent signed the May 9, 2014 IEP on May 22, 2014, and again at the start of the 2014-2015 school year, meaning the May 9, 2014 IEP was implemented. Parent did not sign the November 24, 2014 IEP; the meeting notes indicated Parent left in the middle of the meeting and Student's grandparents remained and signed as participants. Therefore, Student's last agreed-upon and implemented IEP is the May 9, 2014 IEP, with what was listed on the Services page offering Student placement in the general education environment for 82 percent of the time at a public day school, specialized academic instruction in a separate classroom for one period each day, and other related services as identified in the May 9, 2014 IEP. Although Student briefly attended a non-public school and later received one hour per week of home instruction, there was no IEP indicating a change of placement from the public day school, and his "current educational placement" remained the public day school.

While the parties litigate what is the appropriate placement and what are the appropriate related services for Student, Student is entitled to remain in his current educational placement, as identified in his May 9, 2014 IEP.

ORDER

Student's motion for stay put is granted. Until due process hearing procedures are complete, Student is entitled to remain in his current educational placement under the May 9, 2014 IEP, as set forth in this order, unless the parties agree otherwise.

DATE: September 22, 2015

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings