

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014080616

ORDER GRANTING MOTION FOR
STAY PUT

On August 12, 2014, Student filed a request for a due process hearing and a motion for stay put. Student contends that the Los Angeles Unified School District (LAUSD) is not providing the one-to-one behavioral aide services required by the settlement agreement between the parties, which was memorialized in a follow-up individualized education program signed by Student's mother on July 7, 2014.

On August 22, 2014, LAUSD filed an opposition to the motion for stay put. LAUSD contends that it is providing the "dedicated" behavior aide for Student required by the settlement agreement and follow-up IEP.

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.)

DISCUSSION

The May 27, 2014 settlement agreement between the parties stated, in pertinent part:

The District agrees to provide up to 1800 minutes per week of trained Behavior Intervention Implementation (BII) services and 8 hours per month of Behavior Implementation Development (BID) by a District provider from full execution of this Agreement.

The IEP signed on July 7, 2014, called for the 1800 minutes weekly of BII services (as well as compensatory BII services that are not at issue for purposes of this motion). On

the services page the “Service Delivery Model” was listed as “Direct Service (Collaborative).” The meeting notes contained the following language regarding the behavioral aide service: “A BII is trained and is assigned to [Student].”

Both parties agree that the aide service was agreed-upon and memorialized in the IEP. However, they disagree about how that service was to be implemented. Student contends that the aide was supposed to provide one-to-one services to Student. According to Student, after the IEP had been signed, a district staff member told Student’s mother that the aide was not just assigned to Student, but to all the students.

LAUSD contends that the aide is a “dedicated” aide who is assigned to Student. According to the opposition papers, the aide “is assigned to [Student] and assists her with daily school activities.” The aide “monitors and addresses [Student’s] behaviors, and logs her behaviors for data-tracking purposes.” The aide “will sit with [Student] during classroom time” and “will sometimes lead small group instruction with [Student] and some of her peers.”

Based on the language of the agreement and IEP, it appears that Student is correct that the aide was assigned to Student, not to “all” students as told to Student’s mother. To the extent that this stay put motion is a dispute about that statement and whether the aide can be assigned to all students, the motion is straightforward and stay put is granted.

However, if the stay put motion concerns whether the “dedicated” aide is permitted to “sometimes lead small group instruction” with Student and peers as part of the aides’ duties, that involves a factual dispute regarding the meaning of the settlement agreement and follow-up IEP which can only be resolved at hearing. It cannot be decided on a motion for stay put.

ORDER

LAUSD shall continue to provide BII services to Student as called for in the settlement agreement of May 27, 2014, and the IEP signed on July 7, 2014, while this case is pending.¹

DATE: August 27, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

¹ The IEP is referred to at times in the moving and opposing papers as the June 4, 2014 IEP. Apparently the IEP meeting was held on that date, but the IEP was not signed at that time.