

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEHACHAPI UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015030954

ORDER DENYING MOTION FOR
STAY PUT

On March 20, 2015, Student filed a due process complaint naming Tehachapi Unified School District as respondent. Student contemporaneously filed a motion for stay put seeking an order that Tehachapi provide 1,411 minutes intensive individualized services weekly by MAPSS, a non-public agency. On March 25, 2015, Tehachapi filed an opposition asserting that Student's last agreed upon and implemented individualized education program did not include MAPSS's services. Specifically, Tehachapi argues that pursuant to Student's November 14, 2014, IEP addendum, MAPSS's services were temporary with an end date of January 20, 2015; that services were terminated on February 20, 2015 (after parental notification); and that Student attended school without MAPSS services on February 23, 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)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 (IEP) that was implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

If a student's placement in a program was intended only to be a temporary placement, however, 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.)

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

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

The November 14, 2014, addendum to Student’s IEP has a specific end date for MAPPS services of January 20, 2015. The notes from the IEP addendum state that the reason for the service is “to provide more time for MAPPS to complete their interviews, FBA, and to provide time for MAPPS to train aide [aide is then crossed out and replaced with ‘MAPPS ABA therapist’] in supporting Student in the classroom.” Tehachapi continued the services beyond January 20, 2015, and provided written notice to Parents before terminating the services.² In the February 19, 2015, letter to Parents from Tehachapi’s educational services director confirming MAPPS’s services would cease; she indicated that IEP team meetings were held on December 18, 2014, January 22, 2015, and February 3, 2015, where Student’s IEP team reviewed Student’s triennial assessment results and the data collected by MAPPS. Extending services beyond the initial termination date included in the IEP addendum did not covert the services from temporary to Student’s stay-put services. The unambiguous end date for services coupled with the specific rational provided in the IEP addendum indicates the parties’ intent that the services were temporary. Moreover, the MAPPS’s services were terminated on February 20, 2015. Student attended school on February 23, 2015, after the MAPPS’s services were terminated consistent with the anticipated termination under the November 14, 2014, IEP addendum. Student did not file a due process complaint until March 20, 2015. Therefore, Student’s last agreed upon and implemented IEP at the time the dispute arose did not include MAPPS services. For the forgoing reasons, Student’s request for stay put of her MAPPS services is denied.

ORDER

Student’s request for a stay-put order continuing 1,411 minutes weekly of intensive individualized services by MAPSS, a non-public agency is denied.

DATE: March 26, 2015

/s/

JOY REDMON

Administrative Law Judge

Office of Administrative Hearings

² Mother confirmed receiving prior notice that MAPPS’s services would terminate on February 20, 2015, in an email sent to Tehachapi prior to cessation.

