

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

SONOMA CHARTER SCHOOL, SONOMA VALLEY UNIFIED
SCHOOL DISTRICT, AND EL DORADO CHARTER SPECIAL
EDUCATION LOCAL PLAN AREA
OAH CASE NUMBER 2021090263

ORDER GRANTING MOTION FOR STAY PUT

SEPTEMBER 17, 2021

On September 9, 2021, Student filed a Request for Due Process Hearing, called a complaint, and a Motion for Stay Put with the Office of Administrative Hearings, called OAH, naming Sonoma Charter School, Sonoma Valley Unified School District, and El Dorado Charter Special Education Local Plan Area. On September 14, 2021, Sonoma Charter filed an opposition to Student's Motion for Stay Put. On September 17, 2021, Student filed a reply to Sonoma Charter's opposition. OAH did not receive a response from Sonoma Valley or El Dorado.

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 last agreed upon and implemented individualized educational program, called an IEP, placement 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).)

However, if a student’s placement in a program was intended only to be a temporary placement, such placement does not become a student’s “stay put” placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

Student contends Student’s last agreed upon and implemented IEP was dated October 23, 2020, and included specialized academic instruction provided virtually by Lindamood-Bell, a private educational agency. Student further contends Sonoma Charter unilaterally changed Student’s program in August 2021, removing Lindamood-Bell services and offering specialized academic instruction, in the school setting, through Sonoma Charter’s staff.

Sonoma Charter contends it only intended to fund Lindamood-Bell services during the time it offered distance learning to students due to the COVID-19 pandemic, and that it was not a long-term placement. Sonoma Charter further contends the October 23, 2020 IEP stated Student’s program setting was in a regular classroom for 100 percent of the school day and that a change in service providers for specialized

academic instruction to Sonoma Charter's staff, does not constitute a change in placement. Finally, Sonoma Charter contends that pursuant to California law, it cannot continue to provide Lindamood-Bell through distance learning without Student's IEP team determining that such placement is appropriate.

Student's motion was supported by declarations from Rachel Siegel, Director of the Lindamood-Bell center that provided Student's services, and Parent. The motion was also supported by copies of the October 23, 2020 IEP; IEP team meeting notes from March, May, and August 2021; and other correspondence between Parent and Sonoma Charter.

Sonoma Charter does not dispute that Student's last agreed upon and implemented IEP was dated October 23, 2020. The IEP named Sonoma Charter as Student's school of attendance and the regular classroom as Student's program setting for 100 percent of the school day. However, the IEP offered 300 minutes a day, five days a week, of specialized academic instruction through a private program, in the home setting, from September 23, 2020, through October 22, 2021. Specifically, the IEP indicated Student attended Lindamood-Bell via Zoom virtual lessons for 300 minutes a day because that setting allowed Student to make progress on goals. Lindamood-Bell Learning Center is listed as the person responsible for implementing all of Student's annual goals. The meeting notes stated "the least restrictive environment (LRE) is five hours daily of [specialized academic instruction]" and "the benefits of receiving individualized instruction...outweigh any negatives from pulling [Student] from the general education classroom at Sonoma Charter." Nowhere did the IEP indicate Student's Lindamood-Bell services were temporary or in lieu of distance learning.

Sonoma Charter's argument that changing Student's specialized academic instruction provider to Sonoma Charter staff does not constitute a change in placement

is not persuasive. Sonoma Charter not only proposed changing the provider of Student's services, it also proposed changing the setting of Student's services, from home to school. Similarly, Sonoma Charter's argument that it cannot legally continue to provide Lindamood-Bell services unless Student's IEP team determines such a placement is appropriate, is unpersuasive. Student's October 23, 2020 IEP team determined just that when it offered virtual Lindamood-Bell services in the home setting. Sonoma Charter cannot unilaterally change Student's program because it is no longer providing distance learning to its students or because it no longer wants to contract with Lindamood-Bell. Instead, it must propose any changes to Student's program through the IEP process, which it did during Student's August 10, 2021 IEP team meeting, and which Student challenges in the complaint. However, while the dispute between the parties is pending, Student has a right to remain in the program outlined in the October 23, 2020 IEP.

Accordingly, Student's Motion for Stay Put is granted. During the pendency of this due process case, Sonoma Charter must continue to provide Student with 300 minutes a day, five days a week, of virtual specialized academic instruction, in the home setting, through Lindamood-Bell.

IT IS SO ORDERED.

Tara Doss

Tara Doss

Administrative Law Judge

Office of Administrative Hearings