

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021110404

ORDER DENYING MOTION FOR STAY PUT

NOVEMBER 22, 2021

On November 15, 2021, Student filed a motion for stay put. On November 18, 2021, Los Angeles Unified School District filed an opposition on the ground that the services sought as stay put were clearly labeled as compensatory and temporary in Student's last individualized education program, called an 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 last agreed upon and implemented IEP placement

prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

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

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

Here, Parents and Los Angeles resolved multiple disputes prior to Student entering Kindergarten with agreements that included Los Angeles funding hours of compensatory speech therapy provided by a nonpublic agency. Those hours were not completed when Student entered Kindergarten, and a block of 100 hours to be provided by a nonpublic agency were included in the summary of Student's services as compensatory in his Kindergarten IEPs.

In Student's October 8, 2020 IEP, written at the beginning of his First Grade year and during the COVID-19 pandemic, Student was again offered 100 hours of compensatory nonpublic agency speech therapy. The IEP clearly labels the services as compensatory, and states that they will be available through December 31, 2021. Los Angeles sent a letter to Parent on October 10, 2020, agreeing to fund 100 compensatory hours as stated in the October 8, 2020 IEP. The letter also expressly stated that the funding would expire on December 31, 2021 in accordance with the IEP.

At Student's latest annual IEP review, on October 28, 2021, Los Angeles did not offer compensatory nonpublic agency hours.

Student seeks as stay put to access nonpublic agency hours in excess of the block of 100 hours offered in the last agreed upon and implemented IEP of October 8, 2020. Student has used the same nonpublic agency for speech therapy for several years and wants to continue therapy with that agency. Student contends that because Los Angeles has multiple times offered 100 hours of compensatory services, those services were instead part of the offer of a free appropriate public education, or FAPE, and therefore subject to stay put. Student notes that the nonpublic agency services are listed on the in the summary of services constituting the FAPE offer in the October 8, 2020 IEP.

In each and every IEP attached to the motion with the sworn declaration of Parent, the nonpublic agency hours are clearly designated as compensatory with an equally clear expiration date. The letters to Parent from Los Angeles clearly notified Parent that the nonpublic agency services funded were compensatory, with funding to expire as stated in the IEP. The October 8, 2020 nonpublic agency services were intended to be limited and temporary and are not part of Student's stay put program.

Student argues that because Student did not have a due process hearing pending in October 2020, the nonpublic agency services included in the October 8, 2020 IEP could not have been compensatory, and more correctly should be treated as an offer of ongoing services for stay put. That argument defies logic. School districts can, and do, offer compensatory services regardless of whether a due process hearing request has been filed. In March 2020, the California Department of Education acknowledged that compensatory services could be offered by IEP teams in light of the unusual circumstances of the pandemic:

Given the unprecedented situation created by the threat of COVID-19, exceptional circumstances may affect how a particular service is provided under a student's IEP. In such a situation, the IEP team will need to make individualized decisions regarding whether compensatory services are required when the regular provision of services resumes.

(California Department of Education Guidance (March 20, 2020).)

An offer of a compensatory block of speech services in Student's October 8, 2020 IEP as part of a FAPE, following a semester of virtual learning during school closures due to the pandemic, does not infer that Student required such services on an ongoing basis. Nor would a pattern of offering temporary compensatory services convert them to ongoing services for purposes of stay put. OAH enforces the last IEP as agreed upon and implemented. Student's assertion that nonpublic agency services should have been offered on a regular basis to address Student's ongoing needs is a question to be decided after inquiry at hearing, and not on a motion for stay put.

Student's motion for stay put is denied.

IT IS SO ORDERED.

Alexa Hohensee

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Administrative Law Judge

Office of Administrative Hearings