BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SULPHUR SPRINGS UNION ELEMENTARY SCHOOL DISTRICT.	OAH CASE NO. 2013080572 ORDER GRANTING MOTION FOR STAY PUT

On August 15, 2013, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a request for due process hearing (complaint) naming the Sulphur Springs Union Elementary School District (District) as respondent.

On August 21, 2013, Student filed with OAH a motion for stay put. Student seeks an order from OAH which would require the District to permit Student's private licensed vocational nurse (LVN) to accompany Student to class pursuant to the last implemented Individualized Education Program (IEP). On August 26, 2013, the District filed an opposition to the motion. Student filed his reply to the District's opposition on August 27, 2013.

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 IEP 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.)

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

DISCUSSION

Both parties have devoted a significant portion of their pleadings to arguing whether or not Student requires the services of a private LVN at school. For purposes of stay put, the only relevant evidence is the last-implemented IEP and what placement and services it requires.

Both Student and the District agree that Student's parents consented to the December 12, 2011 IEP. Student contends that the December 12, 2011 IEP was amended on February 24, 2012, to permit Student's private duty nurse to attend school with him. In support, Student offers the declaration of Student's mother (Mother) and a copy of the December 12, 2011 IEP (unsigned) and the February 12, 2012 amendment (the amendment), which is signed by Student's parent and two District representatives. Student also contends that the provisions of the amendment were continued in the July 12, 2012 IEP.

The amendment reads: "The IEP team agrees that at parent's request, [Student's] Private duty nurse may attend school with [Student]. His nurse will adhere to all the District's confidentially (sic) and safety policies. The Private duty nurse will attend to [Student's] health needs. School staff will continue to provide for [Student's] educational needs while at school."

Student also contends that the private nurse provision as provided in the amendment was included in the July 11, 2012 IEP, which Student's parents consented to on August 16, 2012. The July 12, 2012 IEP notes state: "His LVN will be at school with [Student] in the afternoons." In the health section, the IEP also provides that Student's "LVN will give a treatment in the afternoon, as needed."

Mother declares that "[f]or over a year [Student's] private nurse remained with him on a daily basis, in his classroom, and worked collaboratively with his aides and teachers." The District counters with the declaration of Belinda Hulien, Student's special day class teacher. Ms. Hulien declares that starting in March 2012, Student's LVN would arrive at school at noon and accompany Student and his aide, Jennifer Burns, into the general education program. The LVN would be present for the remainder of the day. The LVN would interact with Student including changing his position, feeding him, and administrating medications. In those days when the LVN was not present, Ms. Hulien was informed that Student's medical needs were addressed by the school health aide and Student's aide under the supervision of the school nurse, Jan Wilde, R.N.

There is no disagreement that the last implemented IEP is that of July 12, 2012. That IEP clearly provides that Student's private nurse would be permitted at school with Student only in the afternoon.

ORDER

Student's motion for stay put is granted. The District shall permit Student's private nurse to be at school with Student in the afternoons as provided in the July 12, 2012 IEP.

Dated: August 27, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings