

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

JEFFERSON UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2009070533

ORDER GRANTING MOTION FOR
STAY PUT

On July 14, 2009, attorney Diana B. Glick, on behalf of Student, filed a motion for stay put against the Jefferson Union High School District (District). The District has not filed an opposition to Student's stay put motion.

APPLICABLE LAW

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized educational program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

California Code of Regulations, title 5, section 3042, defines "educational placement" 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.

In *Ms. S. ex rel G v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, the Ninth Circuit Court of Appeals addressed the question of a school district's obligation to provide stay put when a student transfers from another school district and the parent files a due process complaint challenging the services offered by the receiving school district. The *Vashon* opinion ruled that when a dispute arises under the IDEA involving a transfer student, "if it is not possible for the new district to implement in full the student's last agreed-upon

IEP, the new district must adopt a plan that approximates the student’s old IEP as closely as possible.” (*Id.* at 1134.)

Subsequently, the Individuals with Disabilities in Education Improvement Act of 2004 (IDEIA), effective July 1, 2005, revised the law concerning stay put placement for students who transfer to a new school district within the same state. Title 20 United States Code 1414(d)(2)(C)(i)(1) provides for an interim placement for those students, as follows:

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

The new IDEA federal regulations, which became effective on October 13, 2006, mirror the above provision.¹ (34 C.F.R. § 300.323(e).)

California Education Code section 56325, subdivision (a)(1), similarly addresses the situation in which a child transfers from one school district to another school district which is part of a different SELPA. Section 56325, subdivision (a)(1), mirrors Title 20 United States Code section 1414(d)(2)(C)(i)(1), with the additional provision that, for a student who transfers into a district not operating under the same SELPA, the LEA shall provide the interim program “in consultation with the parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved [IEP] or shall develop, adopt, and implement a new [IEP] that is consistent with federal and state law.”

DISCUSSION

Student’s motion requests that the District continue to fund his placement at A Better Chance, which is a non-public school, and to provide transportation. Student asserts that his last agreed upon and implemented educational program is the December 5, 2008 IEP with the Pacifica School District (Pacifica), which is a school district for students between kindergarten and eighth grade. The District is for students in the ninth through 12th grades.

The December 5, 2008 IEP maintained Student’s placement at A Better Chance for eighth grade, and provided him with 30 minutes a week of occupational therapy and 60

¹ The U.S. Department of Education’s comments to this regulation state that “the Department interprets ‘comparable’ to have the plain meaning of the word, which is ‘similar’ or ‘equivalent.’” (Federal Register, Vol. 71, No. 156, p. 46681.) Additionally, the comments to a similar regulation, which applies to IEPs for students who transfer from another state, note that if there is a dispute between the parent and the public agency regarding what constitutes comparable services, the dispute could be resolved through mediation or due process. (*Id.* at p. 46682.)

minutes a week of speech and language services. Because Student was going into the ninth grade for the 2009-2010 school year (SY), the December 5, 2008 IEP stated that Pacifica, Student's parents and the District would meet at the end of SY 2008-2009 for Student's transition into the District.

The parties met on June 5, 2009 at an IEP meeting. At the IEP meeting, the District informed Student's parents that the District would not fund Student's continued placement at A Better Chance, and asked Student's parents to visit possible placements. The District agreed to provide Student with the same level of occupational therapy and speech and language services as in the December 5, 2008 IEP. To date, the District has not made an offer of placement for SY 2009-2010.

Student's last agreed upon and implemented educational program is the December 5, 2009 IEP for Student to attend A Better Chance. The District has not made an offer of placement for SY 2009-2010, nor provided any information why Student cannot continue to attend A Better Chance with District provided transportation. Therefore, Student's motion for stay put is granted.

ORDER

Student's motion for stay put is granted. The District shall fund Student's placement at A Better Chance, and provide Student with transportation, pursuant to the December 5, 2008 IEP.

Dated: July 21, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings