BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT on behalf of STUDENT, v. ORANGE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2009121269 ORDER DENYING MOTION FOR STAY PUT

On December 30, 2009, Student filed a motion for stay put concurrent with Student's due process complaint. District did not file an opposition. For the reasons discussed below, Student's motion is denied.

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 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 court in *Vashon* held that when a dispute arises under the IDEA involving a transfer student, and a disagreement exists between the parent and student's new school district about the most appropriate educational placement, "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." The plan thus adopted will serve

the student until the dispute between parent and school district is resolved by agreement or by administrative hearing with due process. (*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 Special Education Local Plan Area (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 Local Education Agency (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 due process complaint was filed concurrently with this motion on December 30, 2009. Student did not include a declaration establishing evidentiary facts. Student attached to the motion a copy of Student's IEP dated December 3, 2007, prepared by Anaheim City School District. On its face, the IEP appears to have been signed and approved on January 26, 2009.

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[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.)

Student's motion and complaint both allege that Student transferred to the Orange Unified School District (OUSD) and registered with the new district on or about December 17, 2008 (sic), that Student was to resume school after the winter break on January 4, 2009 (sic)**,** and that OUSD refused to provide funding or transportation for Student's placement at Speech and Language Center in Buena Park, California (S&LDC), which was Student's last placement pursuant to the December 3, 2007 IEP. Student further alleges that OUSD scheduled an IEP team meeting on January 11, 2010, whereby OUSD's offer of placement at Canyon Hills would be formalized. Given the nature of this motion, presumably Student's registration at OUSD occurred on December 17, 2009, not 2008, and Student was scheduled to return to school on January 4, 2010, not 2009**.** Student's parent does not agree with OUSD's determination that Canyon Hills would be suitable for Student's unique needs, and therefore demands stay put at S&LDC, located in the Anaheim City School District, pending the outcome of due process.

The purpose of stay put is to maintain the status quo pending resolution of the dispute. Both section 1414(d)(2)(C)(i)(1) of the IDEA and Education Code section 56325 (a)(1) provide that District must provide Student a FAPE for a period not to exceed 30 days, by which time the local education authority shall adopt the previously approved IEP or develop, adopt and implement a new IEP. "The plan thus adopted will serve the student until the dispute between the parent and school district is resolved by agreement or by administrative hearing with due process." (*Vashon, supra.* 337 F.3d at 1134.). The status quo in cases involving a transfer student is the interim placement offered by the District

Analysis of whether the new district's interim placement provided a FAPE is to be decided at the due process hearing and is not determined by a motion for stay put. Here Student is primarily asking that the services contained in the IEP from the old school district be instituted in the new District. The new District is not bound by the terms of that prior district's IEP. The new District can either adopt the previously approved IEP or develop, adopt, and implement a new IEP that is consistent with federal and state law.

District complied with the provisions of the IDEA when on or about December 17, 2009 it offered an interim placement at Canyon Hills. That placement is the status quo and becomes stay put for a transfer student.

ORDER

1. Student's motion for stay put is denied.

Dated: January 7, 2010

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings