

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

IRVINE UNIFIED SCHOOL DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2010020637

ORDER DENYING STUDENT'S  
MOTION FOR STAY PUT

On February 18, 2010, District filed a request for due process hearing seeking a determination that it had offered Student a free appropriate public education in an IEP completed on January 8, 2010 and that it did not owe Student independent educational evaluations. Student moved to the District from Nevada in the summer of 2009 and prior to the IEP meeting on January 8, 2010 was attending a District program under an interim placement.

On February 25, 2010, Student filed a motion for stay put (Motion). Student contends that because parents do not agree with the January 8, 2010 IEP that is the subject of District's due process hearing request, Student's stay put placement is under the terms of a June 2008 settlement agreement with a Nevada district, a portion of which was later implemented unilaterally without parental permission by operation of Nevada law. In particular, Student contends that a full-time ABA-trained aide is required at all times during Student's school day. The language of the settlement agreement provided that it was not intended to reflect a free appropriate public education and was intended to be superceded by an IEP in the 2008-2009 school year. A Nevada IEP dated October 30, 2008 included a one-to-one ABA-trained aide during the school day. Parents never consented to the October 30, 2008 Nevada IEP. A November 3, 2009 District IEP that memorialized a 30-day review of Student's interim placement in the District reflects that Student had not attended school in Nevada since approximately January of 2009 prior to enrolling in the District.

District opposed the Motion on March 2, 2010. District contends that Student's stay put placement is the District interim placement, as modified by parents' agreement to eligibility, goals and length of school day following the January 8, 2010 IEP. Specifically, District contends that Student's placement in Nevada in the 2008-2009 school year was not a stay put placement because it was never agreed to, and regardless, was not "implemented" because Student had not attended for months prior to his transfer to District. As discussed below, District is correct and the 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.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64; *D. v. Ambach* (2nd Cir. 1989) 904, 907.)

The following applies to children who transfer to a California district from an out-of-state district:

In the case of an individual with exceptional needs who transfers from district to district *within the same academic year*, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously *approved* individualized education program, in consultation with the parents until the local educational agency conducts an assessment . . . if determined to be necessary . . . and develops a new individualized education program, if appropriate, that is consistent with federal and state law.

(Ed. Code, § 56325, subd. (a)(3) [italics added].)

## DISCUSSION

Here, Student has failed to demonstrate that the terms of the June 2008 settlement agreement and/or the October 30, 2008 Nevada IEP are his current placement for purposes of stay put. The evidence presented in the Motion and District's Opposition shows that the June 2008 settlement agreement was not intended to be stay put, that the October 30, 2008 IEP was never "approved" by parents, Student did not "transfer" from the Nevada district to District during "the same academic year," and regardless, Student was not even attending school in the Nevada district at the time he moved to District. In particular, the June 2008 settlement agreement expressly provides that the parties intended it to be superceded by an IEP developed in the 2008-2009 school year. Although Student contends that the October 30, 2008 Nevada IEP was implemented by operation of Nevada law, Student cannot avoid

that it was never agreed to by parents, nor was it even being implemented because Student was not enrolled for eight month prior to attending school in the District. Because Student transferred to District during the summer of 2009, at a time when he had not been enrolled in the Nevada District for months, the unapproved October 30, 2008 IEP and/or the prior Nevada settlement agreement is not Student's current placement for purposes of stay put.

Stay put was intended to minimize any disruption to a student while a due process hearing was pending by preserving the status quo, i.e., the current placement and services. Student provides no authority for the proposition that stay put requires a new school district to provide services that were neither approved by parent, nor even being implemented, at the time a student moved to the new school district from another state. District is correct that Student's current placement for purposes of stay put is the District's interim placement as altered by parent's consent to some provisions of the January 8, 2010 IEP. Accordingly, the Motion is denied.

#### ORDER

Student's Motion for Stay Put is denied.

Dated: March 08, 2010

/s/

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RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings