

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT
AND NEW HAVEN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010060313

ORDER GRANTING MOTION FOR
STAY PUT

On June 2, 2010, M. Lynn Hansen, attorney for Student, filed a motion for stay put. On June 4, 2010, Melanie Larzul, attorney for the New Haven Unified School District (New Haven), filed an opposition on the grounds that the Office of Administrative Hearings (OAH) lacks jurisdiction to decide stay put when the requested placement was pursuant to an interdistrict transfer, which has been terminated. On June 10, 2010, Student filed a reply to New Haven's opposition. OAH did not receive an opposition from Fremont Unified School District (Fremont).¹

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, §§ 48915.5, 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 individualized education 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.)

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 On June 16, 2010, the parties filed a notice of resolution session outcome. Therein the parties reached an interim agreement "while waiting on [OAH] to make decisions on pending motions." The parties have not informed OAH that they have reached an agreement as to stay put and have not withdrawn the motion for stay put. Accordingly, OAH issues this order on stay put.

The primary responsibility for providing a free appropriate public education (FAPE) to a disabled student rests on a local education agency (LEA). (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 48200.) As a general rule, a student's school attendance is determined by the residency of his parent or guardian. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57.) Section 48200 Of the Education Code, California's compulsory attendance law, requires that a student between six and 18 years of age attend school in "the school district in which the residency of either the parent or legal guardian is located." That district usually becomes the LEA responsible for providing a FAPE to an eligible student. (20 U.S.C. § 1401(19); 34 C.F.R. § 300.28(a) (2006); Ed. Code, § 56026.3.)

There are exceptions to the general compulsory education requirement that children attend school in the school district in which one of their parents or their legal guardian resides. Education Code section 48204, subd. (a)(2), provides that a pupil is deemed to have complied with the residency requirements for school attendance "notwithstanding [Education Code] Section 48200" if an agreement for interdistrict attendance has been made between the transferee and transferor districts.

DISCUSSION

Student's motion for stay put is incorporated into Student's complaint. Student resides with her parents within the geographical boundaries of Fremont. Student asserts that pursuant to a November 13, 2009 IEP, she was placed in the autism program at Cabello High School (Cabello), within New Haven. New Haven allowed for the placement through an interdistrict transfer. The last agreed upon IEP for Student, submitted with Student's reply brief, is dated March 12, 2010. New Haven participated in the development of the March 12, 2010 IEP. The IEP offered Student continued placement at Cabello. Parent signed consent to the continued placement at Cabello, while disputing other aspects of the IEP.

Student asserts that on April 19, 2010, New Haven sent a letter to Student stating that it was revoking Student's interdistrict transfer and effective April 30, 2010, Student would no longer be allowed to attend Cabello. On April 22, 2010, Fremont sent Student a letter informing her that her new placement would be at SPECTRUM, a nonpublic school. Student further asserts that on April 27, 2010, New Haven informed Parents by memo that if they sought a stay put order, New Haven would seek the appointment of a surrogate parent.

New Haven has not disputed these material facts regarding Student's placement and the revocation of the interdistrict transfer. Documents provided by Student in her reply brief confirm that the last agreed upon and implemented placement for Student was at Cabello.

New Haven asserts that OAH lacks jurisdiction to determine stay put because OAH does not have jurisdiction over appeals concerning the denial or revocation of an interdistrict transfer, citing *Student v. Fresno Unified School District* (February 25, 2009) Cal.Offc.Admin.Hrngs. Case No. 2008100696 (cited as *Fresno Unified*). OAH decisions are

not binding precedent, but may be persuasive authority. (Cal. Code Regs., tit. 5, § 3085.) New Haven's reliance upon *Fresno Unified* is misplaced because the issue before OAH in that matter was whether OAH had the authority to consider and overturn a denial of an interdistrict transfer.

The unequivocal language of title 20 United States Code section 1415(j) guarantees that a student remain in his or her then current placement during the pendency of a dispute. (*Honig v. Doe* (1988) 484 U.S. 305, 329 [108 S.Ct. 592, 98 L.Ed.2d 686].) The purpose of stay put is to prevent school districts from unilaterally denying placement to a student while the parties are litigating the very issue of placement. (*Id.* at p. 426.) OAH has jurisdiction to hear disputes concerning placement of students with special needs; accordingly, OAH has jurisdiction to determine stay put. New Haven has provided no legal authority that limits OAH's jurisdiction over the issue of stay put because it involves an interdistrict transfer.²

Fresno Unified did not involve the interplay between stay put and the revocation of an interdistrict transfer. It is further distinguished by the fact that here, Student had already been provided placement at Cabello by New Haven through the interdistrict transfer. New Haven participated in the development of Student's last IEP and offered Student the Cabello placement. Other administrative rulings have found that stay put can be ordered even if the placement was initially procured through an interdistrict transfer. (*Snohomish Sch. Dist.* 106 LRP 12019 (Was. SEA Oct. 24, 2005) (ordering school district to assist in the enrollment process at another school through the interdistrict transfer process as part of stay put); *Great Meadows Regional Bd. of Educ.* 47 IDELR 274 (NJ SEA Oct. 12, 2006) (ordering maintenance of stay put despite expiration of the interdistrict transfer); *Monrovia Unified Sch. Dist.* 102 LRP 10082 (Cal. SEA Aug. 30, 2001) (ordering maintenance of stay put despite expiration of the interdistrict transfer).) These authorities are persuasive.

Finally, New Haven asserts that Fremont is the new LEA responsible for providing Student with a FAPE and as a new receiving district it should implement stay put as closely as possible to the last agreed upon and implemented IEP. (*Ms. S. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134.) New Haven's position regarding Fremont is premature because it assumes that New Haven is not responsible for stay put.

The principle of stay put exists to prevent a school district from utilizing self-help and unilaterally changing or denying a student an educational placement during the pendency of a dispute. New Haven may not unilaterally alter Student's last agreed upon and implemented placement. Accordingly, Student's request for stay put is granted.

² This order does not decide whether OAH has jurisdiction to consider the merits of a revocation of an interdistrict transfer.

ORDER

New Haven and Fremont are ordered to maintain Student's placement at Cabello consistent with the last agreed upon and implemented IEP.

Dated: June 21, 2010

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings