

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. 2010070470

ORDER DENYING MOTION FOR
STAY PUT

On July 8, 2010, Student filed a motion for stay put against the Orange Unified School District. On July 15, 2010, District filed an opposition on the ground that the Office of Administrative Hearings (OAH) had denied Student's similar request for stay put in a previous matter between the parties, OAH Case No. 2009121269.

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.)

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old IEP as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel G v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134.)

DISCUSSION

Student's asserts in her motion for stay put that she transferred into the District from the Anaheim City School District (ACSD) and registered with the District on or about December 17, 2009. Student was then attending the Speech and Language Center in Buena

Park, California (S&LDC), which is a non-public school, pursuant to her January 26, 2009 IEP with ACSD. Student claims that she was to resume school after the winter break on January 4, 2010, but the District refused to provide funding or transportation for Student's placement at S&LDC because the District did not return from winter break until January 11, 2010. The District's January 11, 2010 IEP proposed an interim offer of placement at a District elementary school. Student did not agree with the District's IEP offer, and continued to attend S&LDC at parental expense. On June 10, 2010, the District convened an IEP meeting, and proposed again placing Student at a district school, and not S&LDC.¹ Parent did not agree to the District's IEP offer.

In OAH Case No. 2009121269, Student filed a motion for stay put on the same grounds as in this case, asserting that the District was required to implement Student's January 26, 2009 IEP as the last agreed upon and implemented educational program.² However, Student's motion was denied on January 7, 2010, as a finding could not be made that the District's proposed placement did not approximate as much as possible Student's last agreed upon and implemented educational program. On January 19, 2010, Student filed a motion for reconsideration, which was denied on January 20, 2010, because Student did not raise any new or different facts or law that justified reconsideration of the prior order.

In the present matter, Student contends that the District's IEP offers of January 11, 2010 and June 10, 2010, are not comparable to the January 26, 2009 IEP because Student's needs can only be met at S&LDC, and not at a District school. Student thus raises the same stay put argument as in the prior case. However, Student has failed to support her motion with sufficient evidence, and for the same reasons as determined in the prior two orders, Student failed to demonstrate that the special education and related services offered in the District's IEPs did not approximate the services Student received in her last implemented IEP as closely as possible. Therefore, Student's motion for stay put is denied.

ORDER

Student's motion for stay put is denied.

Dated: July 16, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹ Student did not attach a copy of either proposed District IEP to her motion.

² The parties settled OAH Case No. 2009121269, and Student withdrew her case.