

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL  
DISTRICT

OAH CASE NO. 2010090189

ORDER DENYING MOTION FOR  
STAY PUT

On September 1, 2010, Student filed a due process hearing request and motion for stay put, naming San Mateo-Foster City School District (District). On September 7, 2010, District filed an opposition to the motion for stay put.

APPLICABLE LAW

Each school district must have an IEP in place for a child at the beginning of the school year. (20 U.S.C. § 1414(d)(2)(a); 34 C.F.R. § 300.323(a).)<sup>1</sup> Districts must convene a meeting to develop an IEP within 30 days of the initial determination that the student needs special education and related services. (34 C.F.R. § 300.323(c).)

When due process hearing procedures have been initiated, 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); Ed. Code, § 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 *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, the new district must implement the last agreed-upon IEP to the extent possible. If it is not possible for the new district to implement in full the student’s last agreed-upon IEP, the new

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<sup>1</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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

Subsequently, the law was revised, effective July 1, 2005, concerning placement for students who transfer to a new school district, as follows: 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 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).) California Education Code 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 educational agency (LEA) shall provide the interim program "for a period not to exceed 30 days," by which time the LEA shall adopt the previously approved IEP or shall develop, adopt, and implement a new IEP that is consistent with federal and state law.

These rights of a transferring student only apply in the case of a transfer within the same academic year that he was in the previous district. There are no federal or state statutory provisions addressing the situation where a student transfers between school years, such as during summer vacation. In the official comments to the 2006 Federal Regulations, the United States Department of Education addressed whether it needed to clarify the Regulations regarding the responsibilities of a new school district for a child with a disability who transferred during summer. The Department of Education stated that the IDEA, (20 U.S.C. § 1414(d)(2)(a)), is clear that each school district must have an IEP in place for a child at the beginning of the school year. Therefore, the new district must have a means for ensuring that an IEP is in effect at the beginning of the school year. (71 Fed. Reg. 46682 (August 14, 2006).)

## DISCUSSION

Student is a five-year old student who, during the summer of this year, transferred into District, which is within the San Mateo County Office of Education SELPA, from her prior district of residence, Mountain View-Whisman School District (Mountain View), which was within the Santa Clara County Office of Education SELPA. Pursuant to an IEP dated August 29, 2008, and IEP amendments dated October 3, 2008, and February 13, 2009, to which Parent consented, Student had received the following services from Mountain View: Speech Language Therapy three times per week for 60 minutes, provided by a non-public agency (NPA); Occupational Therapy one time per week for 60 minutes direct therapy and one hour per week consultation, provided by a NPA; 1:1 instructional aide assistance Mondays, Wednesdays and Fridays at preschool from 8:30-11:30; and extended school year during summer break.

Student's family relocated into District on or around May 28, 2010. On July 26, 2010, Parents through their educational advocate, confirmed Student's registration in the District, summarized her previous IEP services from Mountain View, requested that these

services be implemented, and requested that an IEP meeting be convened. District also received the October 3, 2008, and February 13, 2009, Mountain View IEP amendments.

District scheduled, but then cancelled an IEP meeting. Its reasons for canceling were: (1) it was not in possession of all Student's previous school records, IEPs and assessments from Mountain View; (2) it requires more information to make an offer of FAPE; and (3) it has requested permission to assess Student but Parents have not yet consented. District has not yet made an offer of FAPE nor provided any related services to Student.

Student filed for due process and concurrently filed a motion for stay put, contending she is entitled to a continuation of the services that Mountain View had provided. District contends that, since this is an inter-district transfer, Student is not entitled to stay-put, and that since it is between years, District is not required to provide comparable services to those provided by Mountain View. District argues that its only obligation to Student, as a child transferring between school years from one SELPA to another, is to formulate its own IEP and develop its own offer of FAPE for the 2010-2011 school year. Since the 2010 school year only began on September 1, 2010, District contends it is still within the first thirty days of the start of the year, and still within the appropriate time frame to comply with those obligations.

Under the applicable authorities discussed above, District is correct that neither stay-put, nor intra-year transfer obligations, apply to this inter-year, inter-district transfer. The motion for stay put is therefore denied. District must however convene a meeting to develop an IEP within 30 days and have an IEP in place for Student at the beginning of the school year.

#### ORDER

The Motion for Stay Put is denied.

Dated: September 13, 2010

/s/

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JUNE R LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings