

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTECITO UNION SCHOOL
DISTRICT AND SANTA BARBARA
SCHOOL DISTRICT.

OAH CASE NO. 2010110031

ORDER DENYING MOTION FOR
STAY PUT

On October 29, 2010, Student filed a motion for stay put against the Montecito Union School District (MUSD) and the Santa Barbara School District (SBSD). In the motion, Student objected to the Districts' attempt to transition him to seventh grade within the SBSD and requested to be retained in sixth grade within the MUSD, and that the MUSD continue to implement Student's last agreed-upon and implemented educational program based on the previous Office of Administrative Hearings (OAH) decision between Student and MUSD.

On November 3, 2010, the Districts filed a joint opposition. The Districts contended that Student's stay put is the April 2008 IEP, not the previous OAH decision, and that he should transition to seventh grade within the SBSD. On November 8, 2010, the undersigned Administrative Law Judge issued an order that denied Student's motion as to MUSD. The order also requested that Student and SBSD provide additional information by November 16, 2010, which Student and SBSD did, regarding Student's educational program during the 2009-2010 school year and the applicability of California Education Code section 56325.

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)¹; 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.)

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

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.)

The “current educational placement” for the purpose of stay put may also include services administered by the same non-public agency (NPA) if the most recently implemented IEP required the District to provide the services with a specific NPA. (*Joshua A. v. Rocklin Unified Sch. Dist.* (9th Cir. 2009) 559 F.3d 1036.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 (*Van Scoy*) [“stay put” placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability].)

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 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. 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 special education local plan area (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).)

For students transferring from an elementary school district to a high school district, California Code of Regulations, title 5, section 3024, subdivision (b), governs the transfer and requires the elementary school district to invite the high school district to transition IEP meeting, which shall specify the appropriate high school placement. The high school district shall ensure that for a student entering the high school district from an elementary school district that student have an IEP upon the start of the school year.

DISCUSSION

Student sought in the motion for stay put that he remain in sixth grade at a MUSD school and that his educational program be that as set forth in *Student v. Montecito Union Elementary Sch. Dist. and Santa Barbara County Educ. Ofc.* (2009) Cal.Offc.Admin.Hrngs. Case No. 2009050484 (*Decision*), which MUSD did implement. OAH's November 8, 2010 order denied Student's request as to MUSD because the *Decision* is on appeal to the United States District Court, which denied Student's motion for stay put to remain in sixth grade as its ruling is binding on OAH as collateral estoppel on the issue that Student should progress to seventh grade. The issue in this order is Student's request that if he transitions to seventh grade within the SBSB that his last agreed-upon and implemented educational program for stay put is the educational program set forth in the *Decision*. SBSB contends that the *Decision* does not constitute Student's stay put because he transferred into SBSB during the summer.

The parties did not cite to any applicable case law that governs a student's transfer from a feeder school district into the new school district. If Student transferred into SBSB during the school year, because SBSB and MUSD are in the same SELPA, SBSB would be required to provide Student with comparable services as provided in Student's last agreed-upon and implemented educational program. (Ed. Code, § 56325, subd. (a)(2).) However, because Student transferred during the summer, neither Education Code section 56325, subdivision (a)(1) nor subdivision (a)(2) applies. As noted above in the official comments to the 2006 federal regulations, for students eligible to receive special education services who transfer during the summer because title 34 Code of Federal Regulations, part 300.323(e) does not apply, the new school district is not required to create an interim IEP that approximates student's last educational program. Therefore, the new school district is only required to have an IEP in place for student at the beginning of the school year.

In this case, SBSB did develop an IEP for Student in IEP meetings held on May 6, 2010 and June 1, 2010, which Parents did not provide consent for SBSB to implement. Because Student transferred into SBSB during the summer and SBSB had offered an IEP for the start of the school year, as required by title 34 Code of Federal Regulations, part 300.323(a) and California Code of Regulations, title 5, section 3024, subdivision (b), Student is not entitled to a stay put based on his last agreed-upon and implemented education program from MUSD. Accordingly, Student's motion for stay put against SBSB is denied.

ORDER

Student's motion for stay put as to SBSB is denied.

Dated: November 22, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings