

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SADDLEBACK VALLEY UNIFIED
SCHOOL DISTRICT & ORANGE
COUNTY HEALTH CARE AGENCY.

OAH CASE NO. 2010110307

ORDER DENYING MOTION FOR
STAY PUT

On November 3, 2010, Student filed a due process hearing request. The due process hearing request alleged that Saddleback Valley Unified School District (District) and the Orange County Health Care Agency (OCHCA) had denied Student a FAPE by not developing a comparable educational placement for Student upon his family's move into the District's boundaries on October 1, 2010. The complaint alleged that at the time Student's family moved within the District's boundaries, he was enrolled in a court-ordered residential treatment program in the State of New York because of maladaptive behaviors both in and out of school.

Also on November 3, 2010, Student filed a motion for stay put. The motion for stay put seeks an order that District and OCHCA either: 1) continue to fund Student's placement in the Little Flower Union Free School District residential treatment program (Little Flower RTC); or 2) provide a comparable program in a residential treatment center. An IEP dated May 20, 2010 was included as an exhibit to the stay put motion. The IEP recites that Student "was admitted to the Little Flower Residential Treatment Center in December of 2009. He was court placed through the Office of Children's and Family Services (OCFS) due to an exacerbation of behavioral and emotional difficulties." The IEP refers to Student's placement as a "commitment," specifically, "upon the expiration of [Student's] commitment with OCFS in November, his educational needs should be addressed by the responsible planning agencies." The Little Flower RTC is a public school program for children who live in the State of New York, either in New York City or Long Island. There is no information that Little Flower RTC enrolls children from other states or accepts payment from out-of-state school districts.¹ No opposition to the stay put motion was received. As discussed below, the motion is denied.

¹ All information about the Little Flower RTC was obtained from <http://littleflower.schoolfusion.us/>.

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); 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.)

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.)

When a special education student from another state transfers to a California 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. (See 20 U.S.C. § 1414(d)(2)(C)(II); 34 C.F.R. § 300.323(f); Ed. Code, § 56325, subd. (a)(3).)

DISCUSSION

Here, in the due process hearing request, and in the May 20, 2010 IEP, Student’s enrollment at Little Flower RTC is referred to as a commitment by a state agency in conjunction with a court, rather than as an appropriate educational placement developed by an IEP team. The May 20, 2010 IEP on its face describes Student’s “commitment” as ending in November of 2010, at which time it is expected that another agency will develop an appropriate program. Thus, Student would not be entitled to a stay put placement at Little Flower RTC or even a comparable placement in an RTC, because his placement at Little Flower RTC was a temporary court-ordered placement. To the extent Student is seeking a comparable placement offer from District and OCHCA, this is the subject of the due process hearing request and Student will have an opportunity at hearing to present evidence on what a comparable placement would be, and any remedy for the failure to promptly provide one upon Student’s move to California.

Finally, Student has failed to demonstrate how it would be possible for a child who is now alleged to be a legal resident of California to continue to be enrolled in a public school in another state. Specifically, there is no evidence that Little Flower RTC accepts students from outside the State of New York on a fee basis, and no evidence that there is any agreement in place for a California district to fund Student’s enrollment there. To the contrary, the website for Little Flower RTC makes it clear that it is a public school placement whose funding comes from reimbursements administered by the New York State Department

of Education. Thus, Student's request for an order that District and OCHCA continue funding the Little Flower RTC must be denied on this basis as well.

ORDER

Student's Motion for Stay Put is denied.

Dated: November 15, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings