

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011071056

ORDER GRANTING MOTION FOR
STAY PUT

On August 16, 2011, Student filed a motion for stay put against San Francisco Unified School District (District) so that he may continue to attend the Erickson School, his last agreed upon placement pursuant to his individualized education program (IEP). On August 19, 2011, District filed an opposition to Student's motion on the grounds that because of changed circumstances, stay put would be in a comparable placement. Student filed a reply to District's opposition.

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, § 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 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.)

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den.)

(1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].)

A student is not entitled to the identical services pursuant to his or her IEP when those services are no longer possible or practicable. (*Ms. S. v. Vashon Island* (9th Cir. 2003) 337 F.3d 1115, 1133-1134.) When a student's "current educational placement" becomes unavailable, the local educational agency must provide the student with a similar placement in the interim. (*See Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533.)

DISCUSSION

District contends that the Erickson School is not Student's stay put placement because it does not have a contract with either the District or Special Education Local Planning Area (SELPA) for the 2011-2012 school year (SY) and also because the Erikson School has failed in the past to provide adequate services to meet Student's unique needs and did not comply with its contract.

Student has been attending Erickson School pursuant to his IEP beginning in April 2009 and continuing through the end of the 2010-2011 school year. Student's IEP addendum dated April 13, 2011, established that Student's placement for a free appropriate public education (FAPE) is at the Erickson School. District terminated their master contract with Erickson School effective July 20, 2011, due to budget constraints, concerns over the alleged quality of Erickson School's program, and in order to use the site for a new charter school.

Prior to terminating its contract with Erickson School, District did not hold an IEP team meeting to address Student's placement or make an alternative offer of placement and services to Student specifying any proposed placement change from his currently implemented IEP. On July 1, 2011, District notified Student's parent (Parent) by letter that his placement for the 2011-2012 SY would be at the Joshua Marie Cameron (JMC) Academy, a certified NPS, that District determined to meet Student's needs. District informed Parent that Student would begin transition to JMC Academy immediately and attend JMC Academy beginning on August 15, 2011. District notified Parent on August 4, 2011, that an addendum IEP team meeting was scheduled for August 12, 2011 at the JMC Academy to discuss transition.

It does not violate stay put if a school is closed for budgetary reasons and the child is provided a comparable program in another location. School closure for budgetary concerns is inapplicable in this case since Erickson is a NPS and not a public school run by the school district. Student has shown that the Erickson has not closed and is presently approved by CDE as a certified NPS.

Student's IEP shows that there are sufficient references to Erickson School to establish that Student's last agreed upon NPS placement is the Erickson School. Whether the Erickson School remains an appropriate placement for Student is something to be addressed as a substantive issue at a due process hearing. For purposes of stay put, the issue is whether the status quo can be replicated by maintaining Student in his current placement at Erickson School until the dispute over his placement is resolved. The evidence established that Erickson School has complied with the CDE certification requirements for a NPS. Therefore, the status quo can be replicated at Erickson School. Accordingly, Student's motion for stay put to attend the Erickson School pursuant to his April 13, 2011 IEP is granted.

ORDER

1. Student's motion for stay put is granted as his last agreed-upon and implemented educational program is the April 13, 2011 IEP at the Erickson School.

Dated: August 29, 2011

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings