

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROSEVILLE JOINT UNION HIGH
SCHOOL & ROCKLIN UNIFIED
SCHOOL DISTRICT & PLACER
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2012031279

ORDER DENYING MOTION FOR
STAY PUT

On March 30, 2012, Parent on behalf of Student (Student) filed a due process request (complaint) accompanied by a separate motion for stay put. On April 10, 2012, the Rocklin Unified School District (RUSD) and the Placer County Office of Education (PCOE) filed an opposition.

In her motion, Student claims that the last agreed upon individualized education program (IEP) was the April 19, 2011 IEP, which Parents consented to on November 3, 2011, which requires that Student be provided with a non-public agency (NPA) nurse, who is a Licensed Vocational Nurse (LVN), for the full school day and also provide one-to-one assistance as needed. Parents contend that the LVN be provided by a specific agency, Maxim.

RUSD and PCOE contend that the operating IEP is the February 16, 2012 transition IEP as Student transferred into the District. RUSD and PCOE agree that Student is entitled to receive nursing services and one-to-one educational assistance by the assigned LVN. They differ with Student in that they contend that such services can be provided by a PCOE employed LVN who is also a trained instructional assistant.

FACTS

Student is currently 16 years of age and currently lives within the geographical boundaries of RUSD. Student is eligible for special education under the categories of orthopedic impairment and multiple disabilities. Student has been diagnosed with Angelman's Syndrome which causes global deficits. Student is not ambulatory and nonverbal. She requires daily medications and has a g-tube. Student is currently placed at a Special day Class operated by PCOE, Secret Ravine.

Student contends that the last agreed to and implemented IEP was the April 19, 2011 IEP when Student was enrolled in the William S. Hart Union High School District (Hart) which is part of the Santa Clarita Valley SELPA. That IEP provides Student with "a non-

public agency LVN to provide nursing assistance and 1:1 assistance as needed” throughout the school day. Subsequently, Student enrolled in the Roseville Joint High School District (Roseville). Roseville is in the same SELPA as RUSD. At an IEP on October 31, 2011, Roseville proposed to replace Student’s NPA LVN with a PCOE employed LVN. Parents did not consent to the change.

On December 22, 2012, Student transferred to RUSD. On February 16, 2012, RUSD held a 30 day transition IEP meeting. RUSD offered to continue placement in the PCOE SDC at Secret Ravine and offered an LVN to provide services throughout the school day and to provide 1:1 educational assistance. The LVN would be an employee of PCOE who also is a trained instructional assistant. Parents did not consent to the IEP.

APPLICABLE LAW

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures 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).) The purpose of stay put is to maintain the status quo of the student’s educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.)

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.) California Code of Regulations, title 5, section 3042, defines “educational placement” 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.

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 court in *Vashon* held that when a dispute arises under the Individuals with Disabilities Education Act involving a transfer student, and a disagreement exists between the parent and student’s new school district about the most appropriate educational placement, “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.” The plan thus adopted will serve the student until the dispute between parent and school district is resolved by agreement or by administrative hearing with due process. (*Id.* at 1134.)

Subsequently, the Individuals with Disabilities in Education Improvement Act of 2004 (IDEIA), effective July 1, 2005, revised the law concerning stay put placement for students who transfer to a new school district within the same state. Title 20 United States Code 1414(d)(2)(C)(i)(1) provides for an interim placement for those students, as follows:

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

The new IDEIA federal regulations, which became effective on October 13, 2006, mirror the above provision.¹ (34 C.F.R. § 300.323(e).) California Education Code section 56325, subdivision (a)(1), similarly addresses the situation in which a child transfers from one school district to another school district which is part of a different Special Education Local Plan Area (SELPA). 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 Education Agency (LEA) shall provide the interim program “in consultation with the parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved IEP or shall develop, adopt, and implement a new IEP that is consistent with federal and state law.”

DISCUSSION

Here because Student transferred into RUSD, the operable IEP to determine stay put is the February 16, 2012 IEP which offers comparable nursing services to that contained in the April 19, 2011 Hart IEP.

ORDER

1. Student’s motion for stay put is denied.
2. RUSD and PCOE shall provide Student with the services of a health instructional aide who is a licensed vocational nurse and a trained instructional assistant.

Dated: April 10, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings