

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OCEANSIDE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015120915

ORDER DENYING MOTION FOR
STAY PUT

On December 5, 2015, Parents on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing naming Oceanside Unified School District. On December 18, 2015, Student filed with OAH a motion for stay put, supported by a declaration under penalty of perjury from Parent. On December 22, 2015, Oceanside filed an opposition supported by a declaration under perjury by Diane Marie Casato, Special Education Coordinator. For the reasons discussed below, the motion is denied.

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 individualized education program that was 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, subd. (a).)

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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds (*Vashon Island*), 20 U.S.C. § 1414(d)(1)(B).) For example, 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].

DISCUSSION

Student has and still attends Foussat Elementary School. Student also has and continues to attend an after school care program at “Together We Grow,” a pediatric care facility which operates an after-school program. Student’s attendance at TWG is funded by Medicare and the local Regional Center. It is not an IEP listed service. Foussat is within two miles of TWG’s former location in Oceanside. Oceanside, pursuant to parental request, had transported Student to the Oceanside TWG location until September 14, 2015. TWG moved to a neighboring city, Vista, approximately five and one-half miles from its former Oceanside location.

Student’s stay put motion seeks an order compelling District to provide after school transportation to the present location of TWG. Student offers a copy of a November 21, 2014 IEP as the last consented to and implemented IEP. Student also offers a copy of a May 21, 2014 Transportation Application which lists TWG on Mission Avenue in Oceanside as the drop-off location. Student argues that the Transportation Agreement was part of the November 2014 IEP, which is the last agreed upon and implemented IEP. The November 2014 IEP lists under services “special education transportation” without further specification.

Oceanside contends that the last consented and implemented IEP is November 19, 2015. Oceanside offers a copy of the November 2015 IEP which also lists “special education services,” without further specification. Student’s parent consented to this IEP. Thus, the November 2015 IEP is the operative IEP for stay-put.

Oceanside also submitted notes from an IEP meeting held on September 14, 2015 to discuss transportation issues. Parents requested that Oceanside transport Student to TWG, which is located in Vista, after school. Oceanside rejected the request and offered to transport Student to any location within district boundaries as a courtesy to parents. Parents rejected the offer. Oceanside ceased transporting Student to TWG following the IEP meeting.

In reviewing the September 14, 2015 IEP meeting notes, it is clear that Oceanside refused to continue to provide transportation to TWG in Vista. In fact, Oceanside provided information of other transportation services which Parents could utilize to transport Student. Thus at the time of the November 2015 IEP meeting, Parents clearly knew that the transportation services being offered by Oceanside would not include transporting Student outside of district boundaries to TWG. Therefore, transportation to TWG is not a service being provided in the November 15, 2015 IEP; the last consented and implemented IEP.

ORDER

Student's motion for stay put is DENIED

DATE: December 29, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings