

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. 2015121045

ORDER DENYING MOTION FOR
STAY PUT

On December 21, 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 24, 2015, Student filed with OAH a motion for stay put, supported by a declaration under penalty of perjury from Parent. On December 30, 2015, Oceanside filed an opposition supported by declarations under perjury by Diane Marie Casato, Special Education Coordinator, and Linda Horton, Director of Transportation. 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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds (*Vashon Island*), 20 U.S.C. § 1414(d)(1)(B).)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 the adult transition program at Ditmar 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. TWG is not a service provided in Student’s IEP. Ditmar is located three miles from 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 and 12 miles from Ditmar.

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 May 14, 2014 Transportation Application, notes from a September 14, 2015 IEP amendment meeting, and Student’s October 27, 2015 IEP as the last consented to and implemented IEP. Student argues that the Transportation Application was part of Student’s 2014-2015 IEP. Student contends that Student objected to Oceanside refusing to transport Student to TWG’s new location, which makes it stay put.

Oceanside contends that the last consented and implemented IEP is the October 27, 2014 IEP which does not provide transporting Student to TWG. The October 27, 2014 IEP lists special education transportation services as “door to door.”

The September 14, 2015 IEP amendment meeting purpose was to discuss transportation issues. Parents requested that Oceanside transport Student to TWG, which had moved to 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 October 27, 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. The IEP lists transportation services were to be “door to door.” Ms. Horton declared that Oceanside would transport students to and from

their home, or to other locations in Oceanside as a courtesy to families. Therefore, transportation to TWG is not a service being provided in the October 27, 2015 IEP; the last consented and implemented IEP.

ORDER

Student's motion for stay put is DENIED

DATE: December 31, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings