

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

MORELAND ELEMENTARY SCHOOL
DISTRICT,

Respondent.

OAH CASE NO. N2006100442

**ORDER GRANTING STAY PUT
MOTION**

On October 10, 2006, Petitioner Student (Student) filed a request for a due process hearing and a motion for stay put order, naming as respondent the Moreland Elementary School District (District). The motion for a stay put order alleges that the District has refused to maintain Student in his then-current educational placement, a Special Day Class (SDC) at the District's Anderson Village Elementary School. The request for due process hearing is based on the allegation that the district failed to implement Student's Individualized Education Program (IEP) developed in the country of Singapore before Student moved into the District.

On October 26, 2006, the District filed opposition to the stay put motion arguing that Student has not been found eligible for special education and related services.

APPLICABLE LAW

Under federal and State law, unless the parties otherwise agree, a special education student is entitled to remain in his or her current educational placement until due process proceedings are completed. (20 U.S.C. § 1415(j); Cal. Ed. Code § 56505(d).) The purpose of this "stay put" rule is to maintain the status quo of the student's educational program while the dispute is resolved. (*Stacey G. v. Pasadena Independent Sch. Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *Zvi D. v. Gordon Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) The stay put placement is typically that of the most recent previously implemented IEP. (*Thomas v. Cincinnati Board of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) In *Honig v. Doe* (1988) 484 U.S. 305, 323, the United States Supreme Court affirmed that the language of the stay put rule is "unequivocal."

For a student transferring from one state to another, Title 20 United States Code section 1414(d)(2)(C)(i)(II) provides:

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 another 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 conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

For a student making an initial application to public school who does not have an IEP, the stay put statute also provides that such a student “shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.” (20 U.S.C. § 1415(j); see also, 34 C.F.R. § 300.518(b)(2006); Ed. Code § 56505(d).)

DISCUSSION

According to the Stay Put request and Mother’s declaration, Student moved into the District in August 2006 from Singapore. Student is four years old. While Student lived in Singapore, Student was diagnosed with autism by Dr. Bryna Siegel at the University of California, San Francisco. Student received special education services in Singapore. The Stay Put request is not clear whether Student received special education services for autism through an education plan developed by the Singapore government, the United States government, or were privately obtained. When Student moved into the District, Parents met with District personnel regarding Student’s placement. Parents and the District agreed that Student would attend Anderson Village Elementary School and attend a special day class (SDC) for 15 hours per week starting August 31, 2006. Student did not have an Individualized Education Program (IEP) that formalized Student’s placement and services. Parents and District personnel met at an IEP meeting on October 5, 2006. At this meeting, the District did not offer Parents an interim placement and stated that Student could no longer attend Anderson Village Elementary School.

Parents do not establish that Student had been previously determined eligible for special education services under the Individuals with Disabilities Education Act (IDEA) before Student entered the District. Under IDEA, a student is only eligible to the out-of-state transfer protections if the student had been determined eligible to receive special education services in the other State. (20 U.S.C. § 1414(d)(2)(C)(i) and 34 C.F.R. § 300.323(f)(2006).) IDEA only requires that a receiving school district provide a previously eligible child with comparable special education services that the student received in the other state. The law does not provide that the receiving school district must implement an education program developed in another country.

The District does not dispute the above description of events from Parents. The District adds that at the October 5, 2006 IEP meeting the Parents requested that the District implement the education program Student received in Singapore, which the District refused to do. The District asserts that it cannot **permanently** place Student in the SDC until the District determines that Student is eligible for special education services. The District did not offer Parents another placement for Student at the October 5, 2006 IEP meeting.

The District's position that it need not provide Student with special education services as Student's stay put placement is equally untenable. While the District never formally developed an IEP, the District's placement at the Anderson Village Elementary School in a SDC constitutes the District's placement of Student in a public school until the completion of the due process hearing. (34 C.F.R. § 300.518(b)(2006).) Until the completion of the due process hearing, Student must remain in his current educational placement. (34 C.F.R. § 300.518(a)(2006).)¹ Because the District initial public school was the SDC at the Anderson Village Elementary School, this constitutes Student's current educational placement.

ORDER

Student's Stay Put request is granted. Student's Stay Put placement shall be in the SDC classroom at the Anderson Village Elementary School for 15 hours per week with the same level of services Student received while attending before October 5, 2006.

Dated: November 15, 2006

PETER PAUL CASTILLO
Administrative Law Judge
Special Education Division
Office of Administrative Hearings

¹ During this time, the District is required to assess Student for eligibility, and if Student is eligible for special education services develop an appropriate educational program. (20 U.S.C. § 1414(a), Ed. Code § 56043, subd. (a).)