

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009080474

ORDER DENYING MOTION FOR  
STAY PUT

On August 13, 2009, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings (OAH) naming Los Angeles Unified School District (District) as the respondent.

On September 9, 2009, Student filed a Motion for Stay Put. District filed an opposition to Student's stay put motion on September 11, 2009.

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.)

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* ruled that when a dispute arises under the IDEA involving a transfer student, "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." (*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 IDEA federal regulations, which became effective on October 13, 2006, mirror the above provision.<sup>1</sup> (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 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 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

Student contends that he attended Citizen’s Learning Academy (Citizen’s), a non-public school (NPS), while he resided in the Inglewood Unified School District, pursuant to his individualized educational program (IEP) dated April 29, 2008, for the 2008-2009 school year. At the end of the school year, Student moved within the boundaries of the District for the 2009-2010 school year. Student was enrolled in District and District developed a 30-day IEP in which District offered Student placement at Kayne Eras, a NPS within District boundaries. Students’ Parent rejected the proposed placement on the grounds that the offered placement was not appropriate because it was too restrictive and the student population consisted of lower functioning students. Parent requested District allow Student to continue to attend Citizen’s because he had attended there for two years and it is less restrictive. Student contends further that District has the authority to offer placement at Citizen’s

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<sup>1</sup> The U.S. Department of Education’s comments to this regulation state that “the Department interprets ‘comparable’ to have the plain meaning of the word, which is ‘similar’ or ‘equivalent.’” (Federal Register, Vol. 71, No. 156, p. 46681.) Additionally, the comments to a similar regulation, which applies to IEPs for students who transfer from another state, note that if there is a dispute between the parent and the public agency regarding what constitutes comparable services, the dispute could be resolved through mediation or due process. (*Id.* at p. 46682.)

because District has a master contract with Citizen's. Student finally contends that Student's "Stay Put" placement is Citizen's while the due process complaint is pending because it was the placement offered in the last agreed-upon and implemented IEP. Student concedes in his motion that in the case of an inter-district transfer the receiving District "does not have to replicate the exact same placement and services in the last agreed-upon and implemented IEP."

District contends that Student transferred within its boundaries and enrolled at the end of the 2008-2009 school year. On enrolling, District convened a 30-day IEP on June 29, 2009. The IEP offered Student placement of Kayne Eras Center, a NPS, and services equivalent to the April 29, 2008, IEP. District argues that when a Student transfers to a new school District the law requires an interim placement comparable to the last implemented IEP unless otherwise agreed by Parents. District may then adopt the last implemented IEP or develop a new IEP after the 30-day period. District asserts that the IEP offer of placement at Kayne Eras is less restrictive than Citizen's and is a comparable educational placement for purposes of "Stay Put."

Student's motion fails because the law requires the receiving District only provide comparable interim placement and services, not the exact placement and services previously provided to Student by the prior school district. Student has conceded in his motion that he is only entitled to comparable placement and services and has provided no legal authority to the contrary. Student has not shown that District's offer of Kayne Eras was not comparable to Citizen's. Further, whether the District has previously contracted with Citizen's for placement of special education students is not relevant for purposes of determining Student's stay put placement. Accordingly Student's motion is denied.

#### ORDER

Student's motion for stay put at Citizen's Learning Academy while the due process complaint is pending is denied.

IT IS SO ORDERED

Dated: September 21, 2009

/s/

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STELLA OWENS-MURRELL  
Administrative Law Judge  
Office of Administrative Hearings