

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SANTA CRUZ CITY SCHOOL DISTRICT
AND SANTA CRUZ COUNTY OFFICE
OF EDUCATION.

OAH CASE NO. 2009100049

ORDER DENYING MOTION FOR
STAY PUT

On September 28, 2009, Student filed a motion for stay put against the Santa Cruz City School District (SCCSD) and Santa Cruz County Office of Education (SCCOE). Neither SCCSD nor SCCOE filed a response to Student's stay put motion.

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 individualized educational program (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 *Vashon* opinion 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.)

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 IDEA federal regulations mirror the above provision.¹ (34 C.F.R. § 300.323(e) (2006).)

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 Planning 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 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.”

A Local Education Agency (LEA) is generally responsible for providing a free appropriate public education (FAPE) to students with disabilities who reside within the LEA’s jurisdiction. (20 U.S.C. § 1414(d)(2)(A).) California Education Code section 48200 mandates that children between the ages of six and 18 years of age attend a full-time day school or continuation school in the school district where the residency of the child’s parents or legal guardian is located.

DISCUSSION

Student requests in his motion for stay put that SCCSD and SCCOE continue to fund his placement at the Bay School, a non-public school, and provide related services pursuant

¹ 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.)

to his November 19, 2008 IEP with the Pajaro Valley Unified School District (PVUSD). According to the complaint and motion for stay put, Student resided with his Father within the boundaries of PVUSD during the 2008-2009 school year (SY). On November 19, 2008, Father consented to PVUSD's IEP offer for Student's continued placement at the Bay School and the related services. After this IEP, Student moved in with his Mother, who does not reside within the PVUSD's boundaries. To prevent the disruption of Student's educational program, PVUSD agreed to fund Student's placement at the Bay School through the end of SY 2008-2009.

At the conclusion of SY 2008-2009, Mother attempted to enroll Student in school. Mother first attempted to enroll Student in the Live Oak School District, who informed Mother that Student was not a resident of that school district, and to contact the SCCOE regarding which school district Student resided, which Mother did. According to the school registration form attached to Student's motion, Mother enrolled Student on August 24, 2009, at New Brighton Middle School, which is part of the Soquel Union Elementary School District (SUESD), and not a SCCSD middle school. However, according to the correspondence attached to Student's motion, Mother kept requesting special education services from SCCOE, which is not the LEA responsible for providing Student with special education services. Student's motion does not contain any evidence that Mother made a direct request to either SUESD or SCCSD to provide Student with special education services. Therefore, Student did not establish that SCCSD or SCCOE is responsible for providing Student with special education services. Accordingly, Student's motion for stay put is denied, and Student may re-file the motion upon proof of the responsible school district.

ORDER

Student's motion for stay put is denied.

Dated: October 8, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings