

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SADDLEBACK VALLEY UNIFIED
SCHOOL DISTRICT & ORANGE
COUNTY HEALTH CARE AGENCY.

OAH CASE NO. 2010110307

ORDER GRANTING SECOND
MOTION FOR STAY PUT

On November 3, 2010, Student filed a due process hearing request alleging that Saddleback Valley Unified School District (District) and the Orange County Health Care Agency (OCHCA) had denied Student a FAPE by not developing a comparable educational placement for Student upon his family's move into the District on October 1, 2010. The complaint alleged that at the time Student's family moved into the District, he was enrolled in a court-ordered residential treatment program in the State of New York because of maladaptive behaviors both in and out of school.

Student also filed a motion for stay put on November 3, 2010, seeking an order that District and OCHCA either continue to fund Student's placement in New York, or provide a comparable program in a residential treatment center. On November 15, 2010, OAH denied Student's stay put motion on the grounds that the court-ordered placement in New York was temporary and lapsed in November 2010, and that there was no showing a public school placement in New York was open to a student residing in California.

Student filed an amended complaint and another stay put motion on December 9, 2010, this time seeking an order that the District fund a placement it had agreed to on November 18, 2010, at the Provo Canyon Residential Treatment Center (Provo Canyon) in Utah.¹ On December 15, 2010, the District filed an opposition to the new stay put motion, and Student filed a reply. OCHCA did not file a response to Student's new stay put motion.

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

¹ On December 20, 2010, OAH granted Student's motion to amend his complaint, which was deemed filed on that day.

otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); 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 (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

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; *Zvi D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) Congress’s intent was “to prevent disruption of the child's education throughout the dispute process.” (*Joshua A. v. Rocklin Unified School Dist.* (9th Cir. 2009) 559 F.3d 1036, 1040.) The provision seeks to “minimize disturbance and turmoil” and to “provide stability” in a disabled child’s education. (*Johnson v. Special Education Hearing Office* (9th Cir. 2002) 287 F.3d 1176, 1181.)

DISCUSSION

The parties appear to agree on the relevant facts. After Student’s original motion for stay put was denied, Parents and the District met at an IEP meeting on November 18, 2010. OCHCA declined an invitation to attend because the Governor had recently vetoed funding for its duties under Chapter 26.5 of the Government Code (“AB 3632”) and had purported to suspend the statutory mandate that it provide non-educational support for certain residential placements required by a student’s IEP. Parents and the District nonetheless agreed on an IEP placing Student in Provo Canyon, a residential school in Utah, in anticipation of OCHCA’s eventual support.

A dispute then arose between the parties concerning whether Provo Canyon is a for-profit facility, and whether OCHCA, if it had participated, would have funded its share of a residential placement there or would have refused on the ground that the school was operated for profit. On November 29, 2010, the District’s attorney advised Student’s attorney by telephone that she believed the placement at Provo Canyon would not have been supported by OCHCA, and that it was therefore no longer available to Student. She suggested that alternatives be explored. However, on November 30, 2010, Student arrived at Provo Canyon and apparently enrolled there. Student’s amended complaint alleges that Student is “currently being educated at Provo Canyon ... pursuant to an IEP.”²

² Although for purposes of stay put this assertion would be better made in a declaration under oath, the District does not appear to disagree. It acknowledges that Student “arrived” at Provo Canyon on November 30, 2010, and states that it “did not anticipate that Student would enroll ...” after the November 29, 2010 telephone conversation between counsel.

Student asserts that the November 18, 2010 IEP is the last agreed-upon and implemented placement (as of the filing of the amended complaint) and is therefore Student's stay put placement. The District does not dispute that it remains responsible for Student's placement whether OCHCA participates or not, but argues that the placement was not implemented because it informed Student's attorney the day before Student arrived at Provo Canyon that the placement was no longer available.

In order to constitute the educational status quo, a stay put placement must have been implemented as well as agreed upon. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133; *Thomas v. Cincinnati Bd. of Educ.*, *supra*, 918 F.2d at p. 625.) As the *Thomas* court put it, the stay put placement is "the operative placement under which the child is actually receiving instruction at the time the dispute arises." (*Id.* at p. 626.) Student has adequately proved, in the absence of dispute by the District, that on the day the amended complaint was filed he was enrolled in and receiving instruction at Provo Canyon pursuant to the November 18, 2010 IEP. The District's claim that this fact should be disregarded assumes that its attorney, by a telephone call, may suspend or revoke a placement agreed to by its IEP team. It cites no authority for that proposition.

OCHCA's alleged failure to discharge its duties under Chapter 26.5 does not relieve the District of its own obligations. The District is obliged by federal law to provide Student necessary related services whether OCHCA participates or not. (20 U.S.C. §§ 1400(d); 1401(26); Ed. Code, §§ 56000; 56363, subds. (a), (b)(9), (b)(10).) Under Chapter 26.5, a procedure exists for the District, upon a proper showing, to obtain reimbursement from OCHCA for expenses it incurred due to OCHCA's failure to discharge its obligations. (Gov. Code, § 7585.)

ORDER

1. Student's second motion for stay put is granted.
2. The District shall comply with its obligation under federal and state law to fund and support Student's placement at Provo Canyon pursuant to the November 18, 2010 IEP while this dispute is pending.
3. Student's request that OAH order the District to reimburse Parents for their expenses related to the Provo Canyon placement is deferred until hearing.

Dated: December 28, 2010

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings

