

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011090646

ORDER DENYING MOTION FOR
STAY PUT

On September 21, 2001, Student filed a motion for stay put. On September 28, 2011, the Fairfield Suisun Unified School District (District) filed an opposition to the motion for stay put.

APPLICABLE LAW

Each school district must have an individualized education program (IEP) in place for a child at the beginning of the school year. (20 U.S.C. § 1414(d)(2)(a); 34 C.F.R. § 300.323(a).)¹ Districts must convene a meeting to develop an IEP within 30 days of the initial determination that the student needs special education and related services. (34 C.F.R. § 300.323(c).)

When due process hearing procedures have been initiated, 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); 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 (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 *Vashon* opinion ruled that when a dispute arises under the Individuals with Disabilities in Education Improvement Act (IDEA) involving a transfer student, the new district must

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

implement the last agreed-upon IEP to the extent possible. 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 law was revised, effective July 1, 2005, concerning placement for students who transfer to a new school district, as follows: When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old IEP as closely as possible until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e).) California Education Code 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 special education local plan area, the local educational agency (LEA) shall provide the interim program "for a period not to exceed 30 days," by which time the LEA shall adopt the previously approved IEP or shall develop, adopt, and implement a new IEP that is consistent with federal and state law.

These rights of a transferring student only apply in the case of a transfer within the same academic year that he was in the previous district. There are no federal or state statutory provisions addressing the situation where a student transfers between school years, such as during summer vacation. In the official comments to the 2006 Federal Regulations, the United States Department of Education addressed whether it needed to clarify the Regulations regarding the responsibilities of a new school district for a child with a disability who transferred during summer. The Department of Education stated that the IDEA, (20 U.S.C. § 1414(d)(2)(a)), is clear that each school district must have an IEP in place for a child at the beginning of the school year. Therefore, the new district must have a means for ensuring that an IEP is in effect at the beginning of the school year. (71 Fed. Reg. 46682 (August 14, 2006).)

DISCUSSION

Student is a nine-year old student, who was a resident and student of the Del Norte Unified School District (Del Norte) through the end of the 2010-2011 school year (SY 2010-2011). At the end of the SY 2010-2011 and during the summer of this year, Student relocated within the boundaries of District, which is within the Solano County SELPA, from her prior district of residence, Del Norte, that was within the Humboldt-Del Norte SELPA. Pursuant to his Del Norte IEP dated May 3, 2010, as modified on December 3, 2010 and February 3, 2011, to which Parent consented, Student argues that he is entitled to mainstreaming placement in a general education class, with services, supports and accommodations as provided for in the Del Norte IEP.

Student's family relocated into District sometimes in June 2011. As a result, District convened an IEP meeting on June 21, 2011, in order to develop an IEP placement, services and support for Student for the SY 2011-2012. At that IEP team meeting, which was participated in by staff from both District and Del Norte, Student was offered a 30-day

placement in the severely handicapped special day class (SDC) class located at Cleo Gordon Elementary School due to his significant needs and behavioral concerns. Regarding the placement, services and support for Student for the SY 2011-2012, the IEP team met again on September 13, 2011. It does not appear that parent has consented to either the June 21 or the September 13, 2011 IEP offers.

Student filed for due process on September 16, 2011 challenging District's offer of placement in the SDC class, and filed a motion for stay put herein. District contends that, since this is an inter-district transfer, Student is not entitled to stay-put, and that since it is between years, District is not required to provide comparable services to those provided by Mountain View. District argues that its only obligation to Student, as a child transferring between school years from one SELPA to another, is to formulate its own IEP and develop its own offer of FAPE for the SY 2011-2012. Since the SY 2011-2012 only began in August of 2011, District contends it has fulfilled its obligation and made appropriate FAPE offers pursuant to its June 21 and September 13, 2011 IEP offers.

Under the applicable authorities discussed above, District is correct that neither stay-put, nor intra-year transfer obligations, apply to this inter-year, inter-district transfer. The motion for stay put is therefore denied. District appears to have met its obligations to convene an IEP meeting in order to develop an IEP within 30 days of Student's transfer, and to have an IEP in place for Student at the beginning of the school year. Whether those offers of placement offered or denied Student a FAPE is to be litigated on the merits at hearing.

ORDER

The Motion for Stay Put is denied.

Dated: September 30, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings