

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011100074

ORDER DENYING STUDENT'S
MOTION FOR STAY PUT

BACKGROUND INFORMATION

Student filed a request for due process hearing against the Sacramento City Unified School District (District) on September 30, 2011. On that same date, Student filed a motion for stay put. The District filed an opposition to Student's motion on October 4, 2011.

Student contends that his stay put placement is that defined in his last signed and implemented individualized educational program (IEP) dated December 14, 2010. Student asserts that his placement is therefore a special day class (SDC) at Caleb-Greenwood Elementary School (Caleb), which is Student's home school. He states that, as of the beginning of the 2011-2012 school year, the District failed to place him in the SDC at Caleb but instead has placed him in a general education classroom in direct contravention of the placement indicated in his IEP.

The District responds that it recognizes that an SDC is Student's stay put placement. However, it indicates through the declaration of its Director of Special Education that there is no longer an SDC classroom at Caleb. As of the beginning of the 2011-2012 school year, the District moved to an inclusion model for all special education students at Caleb. However, it has continued to provide SDC classrooms at other schools. Specifically, an SDC classroom at Caroline Wenzel School mirrors the program previously provided to Student at Caleb and therefore complies with Student's IEP. The District states that the classroom at Caroline Wenzel School is therefore Student's stay-put.

DISCUSSION

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

otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; 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 California, “specific educational placement” is defined 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. (Cal. Code Regs., tit. 5, § 3042.)

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].) Therefore, by analogy, if a district closes a program at one school and transfers it to another location, the stay put for the children in the first program is the new program at the new location.

In his motion for stay put, Student neglects to address the fact that his SDC program is no longer available at Caleb or the fact that a comparable SDC classroom is available at Caroline Wenzel School. Student states that the District placed him in a general education classroom at the beginning of the 2011-2012 school year at Caleb. The only conclusion that can be drawn from the facts stated in both Student’s motion and the District’s opposition is that Student did not wish to attend the SDC at Caroline Wenzel School and elected to remain at Caleb, his home school, which no longer has an SDC classroom. It appears that his only alternative at Caleb was therefore a general education classroom. The only way to meet Student’s request for stay put in an SDC at Caleb would be for the Office of Administrative Hearings to order the District to create a classroom that does not presently exist at Caleb but does exist at another location. Student offers no authority for this proposition.

Student’s motion for stay put is therefore denied. Student’s stay put is the SDC classroom presently located at Caroline Wenzel School.²

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

² Neither Student nor the District address the issue of whether Student requires the District to provide him with transportation to Caroline Wenzel School since it is not Student’s home school. If there is a dispute as to this issue, Student may bring a motion addressing it.

ORDER

Student's motion for stay put is denied.

Dated: October 7, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings