

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTEBELLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013110523

ORDER GRANTING MOTION FOR
STAY PUT

On November 14, 2013, Student filed a motion for stay put (Motion) and a request for due process hearing (complaint) naming Montebello Unified School District (District). The Motion includes seven unauthenticated exhibits, but was not supported by a declaration under penalty of perjury supporting factual allegations. District did not file an opposition.

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 otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); 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.)

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 for 30 days 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) (2006); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel G v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134.)

DISCUSSION

Student alleges in his complaint that he: is four years old; is eligible for special education; and attended the Los Angeles Unified School District (LAUSD) with a signed and implemented individualized education program (IEP) dated June 4, 2012. He also alleges that LAUSD and Student's parents (Parents) entered into a final settlement agreement of a due process complaint on September 4, 2013 (FSA) that purportedly amended the June 4,

2012 IEP; and that Student's October 9, 2013 implementation IEP was not signed by Parents. Student also alleges that: his family moved to within District's boundaries in October 2013, at which time Parents requested District to implement Student's June 4, 2012 IEP as amended by the FSA; Parents enrolled Student at District's Fremont Elementary School on November 4, 2013; District failed to provide Student with any placement; and, as a result of District's alleged failure to provide an interim placement, Student has not attended school since his November 4, 2013 enrollment.

Student contends that the June 4, 2012 IEP as amended by the FSA constitutes Student's stay put placement and services. However, Student's contention is not persuasive or supported by any credible evidence. First, District was not a party to the FSA, and the language of the FSA expressly states that the services described were not an admission by the former school district of what constituted a FAPE. Student has offered no credible evidence that the terms of the FSA were implemented by an agreed-upon IEP. Because the FSA on its face does not purport to describe a FAPE for Student, and Student has not shown it was ever implemented as part of an IEP, the FSA with Student's former school district cannot be considered for purposes of determining Student's stay put with District.

Second, District's obligation for the first 30 days of Student's inter-district transfer is to provide Student an interim placement comparable to the last IEP in effect. Student transferred between school districts mid-academic year on or about November 4, 2013, and has been enrolled in the District for less than 30 days. Therefore, District is still within the statutory 30-day transfer period described above. Any right to stay put during the 30 day initial enrollment period would be to a program comparable to that provided for in Student's last implemented IEP from his former school district. (See 20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e) (2006); Ed. Code, § 56325, subd. (a)(1).) Here, the last implemented and agreed IEP from Student's former school district is dated June 4, 2012. Accordingly, as a transfer student, Student's stay put placement would be in a program comparable to it.

ORDER

1. Student's motion for stay put is granted.
2. While this dispute is pending, District shall provide Student with a program comparable to that in the former school district's June 4, 2012 IEP, without reference to the FSA with the former school district.

Dated: November 26, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings