

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013110600

ORDER DENYING MOTION FOR
STAY PUT

Student filed a request for due process (complaint) naming Los Angeles Unified School District (LAUSD) on November 19, 2013. On December 23, 2013, Student filed a Request for Order to Maintain Current Educational Placement (stay put motion). OAH did not receive a response from LAUSD.¹ For the reasons discussed below, the motion for stay put is denied.

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 within 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); 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.) Title 34 Code of Federal Regulations, part 300.323(e) (2006), consistent with Title 20 United States Code section 1414(d)(2)(C), expressly provides that the duty to implement a “comparable” IEP for

¹ LAUSD was closed for holiday break at the time Student served the stay put order on LAUSD. However, because the motion will be denied for the reasons discussed below, no prejudice was suffered by LAUSD.

a student who changes districts of residence is *only triggered when the student transfers during the school year*. In the comments to the Code of Federal Regulations, the United States Department of Education noted that some commentators requested that the regulations clarify the responsibilities of the new public education agency to implement the IEP of a child who moves during the summer. The United States Department of Education declined to change the regulations, reasoning that the applicable rule is that all school districts are required to have an IEP in place for each eligible child at the beginning of the school year, such that the new district could either adopt the prior IEP or develop a one. (71 Fed. Reg. 46682 (August 14, 2006).)

DISCUSSION AND ORDER

Student alleges in his complaint that: in the 2011-2012 school year he resided within LAUSD boundaries; he attended Coutin School (Coutin), a non-public school, pursuant to a February 1, 2012 IEP; he relocated his residence to within the boundaries of Simi Valley Unified School District (Simi) in the 2012-2013 school year, Simi held a 30-day IEP on February 27, 2013 and offered placement in a district public high school; Student's parent (Parent) rejected the placement offer but agreed to other parts of the Simi IEP; Student continued to attend Coutin for the remainder of the 2012-2013 school year; Student moved back to within the boundaries of LAUSD on or about August 1, 2013; Student continued to attend Coutin at the beginning of the 2013-2014 school year; Parent learned in October 2013 that LAUSD had revoked the funding authorization for placement at Coutin; and Parent rejected LAUSD's assertion that Student should attend a public high school pursuant to the Simi IEP.

Based upon these factual allegations, Student contends that his stay put placement during the pendency of this matter should be Coutin, as provided for in the LAUSD February 1, 2012 IEP. Student attached to his stay put motion an unauthenticated copy of Student's February 1, 2012 individualized education program (IEP) from LAUSD, an unauthenticated copy of a February 27, 2013 30-day IEP, and a declaration from an administrator from Simi. Student did not offer a declaration under penalty of perjury from Student's parent, an LAUSD administrator or anyone with personal knowledge establishing a majority of the chronological facts upon which Student based his motion. Student also failed to provide any evidence as to whether or not LAUSD held an IEP meeting after August 1, 2013, and whether or not LAUSD adopted the Simi IEP, created a 30-day IEP, or created a new IEP.

The principles of stay put do not apply to LAUSD under these facts. The IDEA limits the duty of the transferee school district to comparably implement IEPs from the prior district to students who transferred during the school year. A summer transfer student is more properly treated like a student applying for initial admission to public school, who is entitled to attend a public program with a new IEP, but is not entitled to "stay put" because at the time of the transfer, the receiving school district was not implementing an IEP as the student's local educational agency. (See 20 U.S.C. § 1415(j).) Instead, the remedy for a

placement dispute for a summer transfer student is to seek a due process hearing to establish what a FAPE is in the transferee district.

Here, Student has offered no credible evidence or persuasive legal authority that establishes that he is entitled to stay put or that his February 2012 IEP should form the basis for stay put. Accordingly, the motion for stay put is denied.

IT IS SO ORDERED.

Dated: January 2, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings