

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT AND WALNUT VALLEY
UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015030166

ORDER GRANTING IN PART
MOTION FOR STAY PUT

On July 17, 2015, Student filed a Motion for Stay Put, asserting that during the pendency of this proceeding that Student should be allowed to remain in her “current educational placement.” Student argues that her current placement constitutes placement at a non-public school for the 2015 extended school year and that either Walnut Valley or Sacramento City should be responsible for funding that placement. Further, Student requests that Student be placed at Beacon School, a non-public school for the 2015 extended school year.

On July 21, 2015, Sacramento City filed an opposition to the motion and on July 30, 2015, Walnut Valley filed its opposition to the motion.

On August 3, 2015, Office of Administrative Hearings ordered Sacramento City to provide additional information regarding Student’s last agreed-upon individualized education program for the 2014 extended school year. On August 6, 2015, Sacramento City complied with said order by filing a supplemental brief, declaration of Sacramento City’s Director of Special Education and Special Education Local Plan Areas, a copy of the notes from Student’s November 4, 2013 IEP team meeting, and Sierra School attendance records for the 2014 extended school year.

FACTS

During the 2013-2014 and for the majority of the 2014-2015 school year, Student resided within the boundaries of Sacramento City Unified School District. From the beginning of the 2013-2014 school year through approximately June 5, 2015, Student attended Sierra School, a non-public school.

In late June 2015, Student was placed in residential group home, Inclusion Specialized, which was located within Walnut Valley Unified School District’s boundaries.

On or around June 29, 2015, Student enrolled in Walnut Valley.¹ Walnut Valley's 2014-2015 school year ended on May 28, 2015. Student requested that Walnut Valley place Student at Beacon Day School, a non-public school, for the 2015 extended school year. Walnut Valley declined Student's request based on its belief that it had not responsibility to provide Student with special education services for the 2015 extended school year. Additionally, Walnut Valley argues in its opposition that Student could not be placed at Beacon School for the 2015 extended school year because Walnut Valley did not have a master contract with Beacon School. Walnut Valley did not provide any evidence that it could not have contracted with Beacon School or another non-public school to provide Student with special education placement and services during the 2015 extended school year.

Through Student's November 4, 2013 IEP, Student was placed at the non-public school, Sierra School for the 2014 extended school year, where Student received 300 minutes per day of specialized academic instruction for a total of five weeks and five thirty minute sessions of speech and language therapy. Parents consented to Student's November 4, 2013 IEP. Student's November 4, 2013 IEP was the last implemented IEP which provided placement and services for the extended school year.

Student did not argue in her motion or provide proof in support that Sacramento City was responsible for providing Student special education placement for the 2015 extended school year or any portion there of because Student was a resident of that school district for a portion of the 2015 extended school year.

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.)

¹ The parties do not dispute that Student became a resident of Walnut Valley Unified School District once she was placed by Alta California Regional Center at the licensed children's institution, Inclusions Specialized.

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); 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 is entitled to remain in her current educational placement until the current due process proceedings conclude. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d). For the purposes of Stay Put, Student's current specific educational placement for the 2015 extended school year constitutes placement at a non-public school, with 300 minutes per day of specialized academic instruction for a total of five weeks and five, thirty minute sessions of speech and language therapy, as those were the placement and services provided by Student's last implemented IEP.

When Student transferred to Walnut Valley during the 2015 extended school year, Walnut Valley became responsible for adopting an interim program for the 2015 extended school year that approximated Student's November 4, 2013 IEP as closely as possible until that IEP could be adopted or a new IEP could be developed. Once Student transferred out of Sacramento City Unified School District, Sacramento City's duty to provide Student with special education placement through her IEP ceased. Therefore, Student's motion is granted in part and denied in part. Accordingly, Student's stay put placement for the 2015 extended school year is a non-public school with 300 minutes per day of specialized academic instruction for a total of five weeks and five, thirty minute sessions of speech and language therapy. This order does not specifically require Walnut Valley to place Student at Beacon School for the extended school year and makes no findings as to whether Beacon school or any other specific non-public school is appropriate for Student. This order is limited to a determination of Student's stay put placement. Student's motion to have Sacramento City fund Student's placement at a non-public school for the 2015 extended school year is denied.

ORDER

1. Student's stay put placement for the extended school year 2015 is a non-public school with 300 minutes per day of specialized academic instruction for a total of five weeks and five, thirty minute sessions of speech and language therapy.

2. Sacramento City is not ordered under Stay Put to fund Student's special education placement for the 2015 extended school year.

DATE: August 12, 2015

/s/

B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings