

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN DIEGUITO UNION HIGH SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015080561

ORDER DETERMINING STAY PUT

On August 14, 2015, San Dieguito Union High School District filed a motion to determine stay put placement and services for Student. No opposition has been received from Student.

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)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.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.)

School districts are required to have an IEP in place for each eligible child “at the beginning of each school year.” (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 56344, subd. (c).) Prior to July 1, 2005, the IDEA at Title 20 United States Code section 1414(d)(2) contained the above requirement but did not expressly address the duty of a school district to

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

implement the IEP of a student who transferred into a district because of a change of residence. Absent an express provision of the IDEA on this subject, some courts adopted a rule that a district met its stay put obligation to a transfer student when it temporarily provided an approximate program to a transfer student if the prior district's program could not be replicated exactly. (See *Ms. S ex rel. G v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134.) Notably, in *Vashon Island*, the Ninth Circuit Court of Appeals stated that the stay put obligation "is not absolute" when an eligible child changes districts because even though stay put is intended to preserve the status quo, "we recognize that when a student transfers educational jurisdictions, the status quo no longer exists." (*Ibid.*)

DISCUSSION

On August 13, 2015, District filed a due process hearing request (complaint) seeking a determination that the interim program developed on May 14 and June 10, 2015 for Student's transfer into District as a middle school student offered Student a free appropriate public education. On August 14, 2015, District filed a motion that the interim program be determined to be stay put for purposes of this proceeding pending hearing. Parent has not consented to the interim program, in part because she wants Student educated at her school of residence within District, regardless of the programs available at that site.

This motion is supported by the sworn declaration of District's program specialist, Rachel Page, who identifies and authenticates the March 27, 2015 IEP, as amended on May 14 and June 10, 2015 and attached to the motion. Ms. Page explains that representatives of District attend the IEP team meetings convened by Student's former elementary school district on May 14 and June 10, 2015 for the express purpose of developing a 45-day interim IEP for the start of the 2015-2016 school year that as closely as possible approximated Student's March 27, 2015 IEP. The 45-day interim IEP was documented as May 14 and June 10, 2015 amendments to the March 27, 2015 IEP. Ms. Page observed Student in her elementary school placement, was a member of the May and June 2015 IEP team meetings, and is familiar with the special education programs in District. In her opinion, the functional life skills classroom at Oak Crest Middle School in District, in combination with the special education and services offered in the IEP amendments, best approximates Student's old IEP.

Here, Student matriculated to seventh grade, and transferred between school districts as a result. Although District was required to have an IEP in place at the beginning of the 2015-2016 school year, per *Vashon Island*, District had no duty to exactly replicate Student's last agreed upon and implemented IEP from a former school district. Instead, District developed a new interim IEP, in the form of amendments to the old IEP, with the input of Student's elementary school IEP team and Parents. That interim IEP approximated Student's last agreed upon and implemented IEP as closely as possible, with placement and services in the functional life skills classroom at Oak Crest Middle School. Student has not filed opposition to dispute that the interim IEP and proposed location approximate Student's last agreed upon and implemented IEP as closely as possible. Accordingly, the new interim IEP is Student's stay put during the pendency of this proceeding.

Student's stay put program consists of the special education and related services contained in the March 27, 2015 IEP, as amended on May 14 and June 10, 2015, in the functional life skills classroom at Oak Crest Middle School.

IT IS SO ORDERED.

DATE: August 25, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings