

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015101065

ORDER DENYING MOTION FOR
STAY PUT

On October 28, 2015, Student filed with the Office of Administrative Hearings a motion for stay put against the Bellflower Unified School District. District submitted an opposition brief on November 5, 2015.

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, 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.)

However, if a student’s placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student’s “stay put” placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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

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.)

The primary responsibility for providing a FAPE to a disabled student rests on a local educational agency. (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 48200.) As a general rule, a student's school of attendance is determined by the residency of his parent or guardian. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57.) Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. Education Code section 48204, subdivision (b), provides that a district may deem a student to have complied with the residency requirement for school attendance in the district if at least one parent is physically employed within the boundaries of that district for a minimum of 10 hours during the school week. A district is not required to admit such a student to its schools, but a district may not refuse to admit a student on the basis of race, ethnicity, sex, parent income, scholastic achievement, or any other arbitrary consideration. (Ed. Code, § 48204, subd. (b)(1).)

OAH does not have jurisdiction over interdistrict transfer requests as jurisdiction to hear an appeal of a denial of an interdistrict transfer request lies with the county board of education or its designee. (Ed. Code, § 46001, subd. (b)(1).)

DISCUSSION

In this case, according to Student's complaint and motion for stay put, Student resided in District since the 2013-2014 school year until just after the start of the 2015-2016 school year, when Student and his family moved into the Long Beach Unified School District. Mother still works within the boundaries of District. While Student resided within District, he received special education services in a self-contained special day class. After Student and Parents moved out of District, District permitted Student to attend his District special day class for five weeks, before Student's request for an inter-district transfer was denied. District ceased permitting Student to attend its special day class on October 14, 2015. Student's sibling, a general education student, was initially denied an inter-district transfer, but granted a conditional transfer on October 21, 2015, provided that his grades improve.

While Student's complaint and motion for stay put raise hardship issues as to why he should continue to attend District's special day class, those issues are outside this motion for stay put. District never granted Student an inter-district transfer, and permitting him to remain in the District special day class while District processed his inter-district request is tantamount to a continuation of temporary placement, which does not constitute a stay put

placement. Accordingly, Student's motion for stay out is denied, as he does not reside in the District and was never granted an inter-district transfer.

ORDER

Student's motion for stay put is denied.

DATE: November 5, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings