

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

vs.

ANAHEIM UNION HIGH SCHOOL  
DISTRICT,

Respondent.

OAH CASE NO. N 2007040515

ORDER RE: MOTION FOR STAY  
PUT

On April 17, 2007, the Office of Administrative Hearings (OAH) received a due process complaint and motion for stay put from Mother, on behalf of her son, Petitioner Student. On April 25, 2007, OAH received an opposition to the stay put motion from attorney Jeffrey Riel, on behalf of Respondent Anaheim Union High School District (Anaheim Union).

APPLICABLE LAW

Under federal and state special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.514(a) (1999); 34 C.F.R. § 300.518(a); Ed. Code §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent Sch. Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *Zvi D. v. Gordon Ambach* (2d Cir. 1982) 694 F.2d 904.) For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Board of Education* (6th Cir. 1990) 918 F.2d 618, 625.)

In *Ms. S. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, the Ninth Circuit Court of Appeals addressed the question of the new district's obligation to provide stay put when a parent files a due process complaint challenging the services offered by the

new school district. The *Vashon* opinion ruled that when a dispute arises under the IDEA involving a transfer student, “if it is not possible for the new district to implement in full the student’s last agreed-upon IEP, the new district must adopt a plan that approximates the student’s old IEP as closely as possible.” (*Id.* at 1134.)

The Individuals with Disabilities in Education Improvement Act of 2004 (IDEA), effective July 1, 2005, revised the law concerning stay put placement for students who transfer to a new school district within the same state. 20 U.S.C. section 1414, subdivision (d)(2)(C)(i)(1) provides for an interim placement for those students, as follows:

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

The new IDEA federal regulations, which became effective on October 13, 2006, mirror the above provision.<sup>1</sup> (34 C.F.R. § 300.323(e).)

California Education Code section 56325, subd. (a)(1) (hereinafter section 56325(a)(1)) similarly addresses the situation in which a child transfers from one school district to another school district which is part of a different SELPA. Section 56325(a)(1) mirrors section 1414(d)(2)(C)(i)(1), with the additional provision that, for a student who transfers into a district not operating under the same special education local plan area (SELPA), the LEA shall provide the interim program “in consultation with the parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved [IEP] or shall develop, adopt, and implement a new [IEP] that is consistent with federal and state law.”

California Education Code section 56034 provides the following:

‘Nonpublic, nonsectarian school’ means a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an individualized education program and is certified by the department. It does not include an organization or agency that operates as a public agency or offers public service...

---

<sup>1</sup> The U.S. Department of Education’s comments to this regulation state that “the Department interprets ‘comparable’ to have the plain meaning of the word, which is ‘similar’ or ‘equivalent.’” (Federal Register, Vol. 71, No. 156, p. 46681.) Additionally, the comments to a similar regulation, which applies to IEPs for students who transfer from another state, note that if there is a dispute between the parent and the public agency regarding what constitutes comparable services, the dispute could be resolved through mediation or due process. (*Id.* at 46682.)

California law contains additional requirements for nonpublic schools, including the provisions in Education Code sections 56365 and 56366.

## DISCUSSION

Previously, Student was a resident of the Santa Ana Unified School District (Santa Ana). While at Santa Ana, Student had an agreed-upon individualized education program (IEP) dated May 1, 2006. That IEP placed him at Therapeutic Education Center (TEC), a nonpublic school (NPS), and also included provision of transportation daily and individual/group therapy for half an hour per week. Pursuant to that IEP, Student attended school at TEC.

Thereafter, Student moved out of Santa Ana and into the jurisdictional boundaries of Anaheim Union. At an IEP meeting on March 22, 2007, Anaheim Union offered to implement Student's May 2006 IEP, including related services, at the Bridges special day class (SDC) program, which is located on Anaheim Union's Magnolia High School campus. Anaheim Union offered to transition Student gradually from TEC to the Bridges program, such as by waiting until the end of the academic quarter to change schools, or splitting his day between the two schools for a few months.

Both section 1414(d)(2)(C)(i)(1) of the IDEA and Education Code section 56325(a)(1) provide that Anaheim Union must provide Student a FAPE, "including services comparable to those described in the previously held IEP." Anaheim Union asserts that the Bridges SDC is "similar to the small structured [SDC] Student attended at the NPS." However, Anaheim Union has not offered any evidence to establish that the Bridges SDC is comparable to the Student's NPS. Considering the legal requirements applicable to nonpublic schools, an SDC on a mainstream high school campus does not appear to constitute "comparable services" when compared to an NPS.

## ORDER

To comply with its stay put obligations, Anaheim Union must offer Student a placement comparable to the placement in his May 1, 2006 IEP, such as placement at an NPS.

Dated: May 9, 2007

---

SUZANNE B. BROWN  
Administrative Law Judge  
Special Education Division  
Office of Administrative Hearings