BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2026040418

ORDER GRANTING MOTION FOR STAY PUT

MAY 6, 2026

On April 8, 2026, Parent, on behalf of Student, filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Capistrano Unified School District as respondent. On April 13, 2026, Student filed a motion for stay put. On April 16, 2026, Capistrano filed an opposition to the motion. On April 17, 2026, Student filed a reply to Capistrano's stay put opposition.

On April 24, 2026, Student filed "Supplemental Evidence in support of Stay Put." Student's supplemental evidence was not considered, as it was uncorroborated hearsay. The document was not on letterhead and was not signed. As a result, the document was not the "sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs." Uncorroborated hearsay cannot be used as a basis for a finding of fact in a special education hearing. (Cal. Code Regs., tit. 5, § 3082 subd. (b).)

Furthermore, a stay put ruling is a limited inquiry into whether Student is entitled to remain in an educational placement pending the outcome of the due process hearing procedures. A stay put ruling should not rule on any unexhausted claims in the underlying complaint. (see, *E.M.C. v. Ventura Unified School District*, (C.D. Cal. 2020) 2020 WL 7094071, citing, *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dep't of Educ.*, (9th Cir. 2010) 600 F.3d 1104, 1114; *Van Duyn v. Baker Sch. Dist.* 5J, (9th Cir. 2007) 502 F.3d 811, 822.)

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."

Student asserts that he was involved in an initial IEP development process, that was not completed when his interdistrict transfer was suddenly revoked. Student asserts Capistrano completed assessments and conducted his initial IEP on March 31, 2026. According to Student, the IEP was not finished, and Student was never offered a final IEP for his Parent's consent. Student argues Capistrano's revocation of Student's interdistrict transfer permit, issued April 1, 2026, violated the IDEA because it was not a mutually agreed upon change of placement and the District failed to offer an alternative educational setting or instructional services to a Student known to have behavior challenges which were part of his ongoing IEP process.

Capistrano argues Student did not have an IEP in place at any time and without an IEP he was not entitled to Stay Put. Capistrano further argues the revocation of Student's interdistrict transfer was based on contractual violations and was not a change of placement. For the reasons explained in this order, Student is found to be entitled to stay put.

Here, Capistrano concedes in its opposition that:

- Student was granted an interdistrict transfer for the 2025-2026 school year.
- On March 31, 2026, during Student's initial IEP team meeting, Student was determined to be eligible for special education under the categories of autism, other health impairment and speech language impairment, but an IEP was not signed by Parent.
- On April 1, 2026, Student's interdistrict transfer was revoked effective Friday, April 3, 2026 on two grounds: (1) omitting material information and failing to provide complete, accurate, and non-misleading information when applying for the interdistrict transfer permit; and (2) Student's failure to uphold behavior standards.

Student's moving papers note spring break followed the revocation notice's effective date. Student asserts his Parents were advised Student had to be enrolled in a different school district when school resumed on April 13, 2026. The interdistrict transfer revocation notice makes no mention of omissions or misrepresentations in the interdistrict transfer permit application. The revocation notice cites only unsatisfactory academic performance and behavior, specifically "instructional disruptions and physical contact with peers."

Generally, stay put is only available to a Student who has a current IEP. However, in this instance revocation of Student's interdistrict transfer permit, one day after the initial IEP team meeting Parent complains was incomplete, violates the spirit of the stay put law. Both sides concede Student is eligible for special education and related services. Parents should not have to accept what they believe is a deficient offer of FAPE in order to avoid having their interdistrict transfer permit revoked.

Courts have determined that, in some instances, a child with a suspected disability is not required to have an IEP to qualify for stay put. Generally, these are in cases of disciplinary action enacted regarding a child with a known disability. (see, *Hacienda La Puente School District of Los Angeles v. Honig* (9th Cir. 1992) 972 F. 2d 487 (student not previously identified as disabled has right to IDEA due process hearing); *M.P. v. Governing Board of Grossmont Union High School District,* (S.D. CA. 1994) 858 F. Supp, 1044 (high school student with pellet gun in car trunk subject to subsequent expulsion proceedings has right to due process and stay put); *S.W. v. Holbrook Public Schools (D. Mass. 2002)* 221 F. Supp. 222 (Student known to have mental health concerns and being expelled entitled to stay put) ; *Lower Kuskokwim School District v. Maxie et al.* (D. AK. 2020) 2020 WL 3405207, (Student with known mental health concerns subject to expulsion proceedings for sharing ADHD medications, right to due process and stay put.)

The Ninth Circuit Court of Appeals has been consistently protective of a disabled Student's right to avoid disruption of his education. (*Joshua A. v. Rocklin Unified Sch. Dist.*, (9th Cir. 2009). 559 F.3d 1036, 1040 (9th Cir. 2009) ["The stay put provision acts as a powerful protective measure to prevent disruption of the child's education throughout the dispute process.]; *Johnson ex rel. Johnson v. Special Educ. Hearing Office, State of Cal.* (9th Cir. 2002) 287 F. 3d. 1176, 1181 ["The purpose of the "stay put" provision is to strip schools of the "unilateral authority they had traditionally employed to exclude disabled students ... from school"].)

Here, Capistrano conceded that, as of the IEP team meeting on March 31, 2026, Student qualified for special education under the categories of autism, other health impairment, and speech and language impairment. Capistrano also conceded the interdistrict transfer was granted for the entire 2025-2026 school year. Yet on April 1,

2026, one day after the March 31, 2026 initial IEP team meeting, Capistrano issued a notice it was revoking Student's interdistrict transfer effective Friday, April 3, 2026,. Capistrano's one week Spring break commenced Monday April 6, 2026. Capistrano's revocation notice directed the Student not to return after spring break ended on April 13, 2026.

Capistrano argues a district may not implement an initial IEP or provide special education services without parental consent. Capistrano goes on to assert. that, as Parent did not consent to Student's initial IEP, Student remains a general education student unless and until consent is obtained, or a due process decision authorizes services. (34 C.F.R. § 300.300(b); Ed. Code § 56346).) However, Capistrano cites no authority for the proposition that the fact the March 31, 2026 IEP was an initial IEP meant Student had no stay put rights.

The reason for the stay put law is to avoid having a student Capistrano knows is disabled, summarily removed from school. In this case, Capistrano's own document and statements support a conclusion that Student was known to be eligible for special education. One meeting was held during which parents did not consent to an IEP. The next day, Capistrano revoked Student's permission to attend school in its district. This is exactly what the stay put statute was enacted to avoid.

Student's stay put papers assert the IEP discussions were not finished. That is supported by the fact that Student filed a due process hearing request alleging a dispute regarding the IEP offer. It is not unusual for initial IEP team meetings to require more than one session to develop an IEP for a student. Student's assertion is accepted as true for purposes of the stay put motion. Capistrano seems to argue that, absent Parent's consent to its IEP offer on the first day of discussions, Student had no stay put rights. This argument is not persuasive.

AN IEP IS NOT REQUIRED TO ESTABLISH A STAY PUT PLACEMENT

Capistrano argues that because Student does not have a signed, consented to IEP in place, he has no placement in which to "stay put." However, such an analysis is contrary to the letter and the spirit of the law.

As previously discussed, the IDEA states, "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).) The statute does not require that Student be maintained in a special education placement, or even a placement identified in an IEP. Even the Ninth Circuit Court of Appeals has not limited stay put placement this way. *L.M. v. Capistrano Unified Sch. Dist.*, (9th Cir. 2009) 556 F.3d 900, 902 ["For purposes of Stay Put, the current educational placement is typically the last agreed upon and implemented individualized educational program, called IEP, placement prior to the dispute arising.]; *Johnson v. Special Educ. Hearing Office*, (9th Cir. 2002) 287 F.3d 1176, 1180. [The IDEA does not define the phrase "current educational placement." Courts have generally interpreted the phrase to mean the placement set forth in the child's last implemented IEP.] *(emphasis added).*)

None of the cases examining stay put applicability to Students prior to special education eligibility involve a student with an IEP placement. Stay put protections are also intended to protect students who are not yet eligible for special education, but engaging in the IEP development process or the due process procedures necessary to challenge an initial IEP. Districts are not allowed to pursue due process to require students to enroll in special education; however, Parents may pursue due process regarding the appropriateness of an initial IEP. In this case, that is exactly what happened.

Requiring an IEP to exist to find stay put applicable to a student determined eligible through school district assessments but for whom a complete IEP had not yet been developed would be an absurd interpretation of the clear statutory language. Furthermore, the plain language of the IDEA states that Student is entitled to remain in his current "educational placement" until due process procedures are complete. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) In these circumstances, Student is entitled to stay put in his then current educational placement. Student's educational placement prior to filing his due process request was his elementary general education classroom.

ORDER

1. Student's motion for Stay Put is Granted.
2. Stay Put is the elementary school, general education classroom in which Student was placed prior to the interdistrict transfer revocation.
3. No determination is made here regarding the legitimacy of the termination of the interdistrict transfer revocation on contractual grounds.
4. In the future, Student is reminded that all papers must conform with the formatting requirements of California Code of Regulations, title 1, section 1006. Particularly, Student must ensure the representative's name, address, and telephone number is provided on the first page of every document. An email address may be substituted for a street address if Student has agreed

with OAH to receive documents via email. Additionally, Student is notified that OAH 's website includes a list of no-cost and low-cost attorneys, who handle special education cases.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings