BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. DELANO UNION ELEMENTARY SCHOOL DISTRICT; DELANO UNION SCHOOL DISTRICT	OAH Case No. 2016100759 (Primary)
DELANO UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016100769 ORDER REQUIRING ADDITIONAL INFORMATION FOR MOTION FOR STAY PUT AND OPPOSITION

On October 26, 2016, Student filed a motion for stay put, which was supported by two declarations under penalty of perjury, a copy of Student's May 5, 2016 individualized education program from Torrance Unified School District, and authenticated correspondence. On October 31, 2016, Delano Union School District filed an opposition supported by declarations under penalty of perjury.[1]

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, 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

[1] District concurrently filed a Motion to Dismiss which will be addressed in a separate order after Student has had an opportunity to respond to that motion.

an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

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 School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, 20 U.S.C. § 1414(d)(1)(B).) The Individuals with Disabilities Education Act and state law do not expressly provide that students who transfer school districts between academic years are entitled to a comparable placement. (See *Ibid.*)

DISCUSSION

Student asserts that he attended Torrance Unified School District during the 2015-2016 school year. His last agreed upon and implement IEP developed by Torrance was on May 5, 2016. Father's declaration establishes that, for personal family reasons, he wanted Student to attend school for the 2016-2017 school year at Delano. He enrolled Student at Delano on June 17, 2016. Delano held two IEP meetings for Student in July and early August 2016. Father disagreed with Delano's offers of FAPE, and asserted his right to "unilaterally place" Student at an undisclosed educational institution. Delano's opposition includes a declaration from its special education director who asserts that Student has never attended any school at Delano or within Kern County during the 2016 extended school year or regular 2016-2017 school year. Student claims Delano is required under the doctrine of stay put to implement the May 5, 2016 IEP from Torrance, including specific behavior services that were provided by a non-public agency.

Before the merits of the stay put motion can be addressed, the parties shall provide, on or before 3:00 p.m. on November 4, 2016, by declaration under penalty of perjury or appropriate authenticated evidence, the following:

1. The date of the last day of the 2015-2016 school year for Torrance and Delano.

2. Applicable legal authority and argument on the issue of whether a new school district is obligated to maintain the "status quo" under Education Code section 56505 subd. (d) if a child enrolls in the new district after the end of regular academic school year.

IT IS SO ORDERED.

DATE: November 01, 2016

DocuSigned by:
Adrienne L. Krikorian
3475616B5EDF4C6...

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings