BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PASADENA UNIFIED SCHOOL DISTRICT, v. STUDENT.	OAH CASE NO. 2013090588 ORDER GRANTING MOTION FOR STAY PUT

On September 18, 2013, the Pasadena Unified School District (District) filed a request for a due process hearing against Student. On January 10, 2014, Student filed a motion for stay put, seeking to require the District to continue funding certain travel costs for Student's parent. On January 15, 2014, the District filed an opposition. On January 21, 2014, Student filed a reply.

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.)

DISCUSSION

This motion for stay put involves the costs of air transportation for Student's parent to travel to and from the California Center for the Blind. Student contends that the District previously paid for air transportation for Student's parent on a weekly basis so the parent could accompany Student on the trip to and from school. According to Student, the District subsequently changed its policy to require Student's parent to pay for the airline ticket up

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

front and then seek reimbursement from the District. This has caused a hardship for Student's parent who does not have the money to pay for the tickets in advance.

The District does not dispute that it is required to pay for airfare under the terms of the prior IEP. However, the District contends that the IEP does not require the District to pay for the airfare in advance. The District believes that it is complying with the IEP by offering to reimburse the parent.

A terms of the IEP's in question support Student's position. The September 8, 2011 IEP called for the District to provide transportation "curb-to-curb." The meeting notes for the various meetings leading up to the IEP offer contained the following statements regarding transportation:

> IEP team discussed a Special Day Class (SDC) setting. District will make a referral to CSB [California School for the Blind]. District would have responsibility for organizing transportation back/forth for parent and student (noting that [Student] has health concerns). District will investigate mother's concerns regarding this as a placement.
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> Later meeting notes go on to state:
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> District received a letter from...CSB...stating that [Student] has been accepted for a 60 day assessment for possible enrollment. CSB asks that [Student] arrive at CSB on Wednesday, September 14, 2011 at 12:50 PM to check in and register.
>
> PUSD will pay for the parent's airline ticket – one roundtrip ticket each school week during this 60 assessment period – to escort [Student] from home to the CSB. PUSD will pay for a one way ticket for [Student] for transportation to CSB.
>
> CSB should pay for any other needed transportation. CSB will pay for [Student] as student to get to/from CSB once she is registered. District acknowledges that need to provide transportation for mother of [Student] is due to [Student's] unique medical needs.

The November 7, 2011 IEP stated, in part: "Mom is asking if the district will continue to fund air fare to and from the airport, the district states yes."

Included with Student's exhibits for the motion was a ruling by the California Department of Education (CDE) on a compliance complaint relating to the costs of air travel. That compliance complaint also supports Student's position. CDE's findings state, in part:

> The District failed to meet the requirements of EC Section 56043(i). The February 15, 2011, and November 7, 2011, IEPs, state the District would

provide transportation for the parent and student each week to the CSB, including ESY. On June 29, 2012, the District informed the parent that it would not pay up front for the parent's transportation costs and would now require the parent to pay first and request to be reimbursed at a later date. The student did not attend ESY because the parent could not afford to purchase the airline tickets. To require the parent unilaterally to pay for IEP services first and then apply for reimbursement is a violation of a free and appropriate public education. The District is out of compliance.

Student's position on this issue is correct. The IEP acknowledges that transportation for Student's parent is necessary because of Student's unique health needs. The District agrees to pay for those services in the IEP. There is nothing in the IEP that requires Student's parent to pay for those services up front. Student's parent does not have the ability to fund the cost of an airline ticket up front – by requiring payment up front, the District is denying that IEP service to Student.

Stay put requires the District to fund the air transport for Student's parent in advance. It is not sufficient for the District to offer reimbursement.

ORDER

The District shall provide Student and Student's parent with the transportation services called for in the IEP as part of stay put while this case is pending. The airfare for Student's parent will be paid in advance by the District – the District may not require the parent to pay for the airline ticket(s) up front and then seek reimbursement.

Dated: January 22, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings