BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. DUBLIN UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018070394 ORDER GRANTING MOTION FOR STAY PUT

On August 7, 2018, Student filed a motion for stay put. On August 10, 2018, District filed an opposition.

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, subd. (a).)

Family Code section 6550, subdivision (a), provides that a "caregiver's authorization affidavit that meets the requirements of this part authorizes a caregiver 18 years of age or older who completes items 1 to 4, inclusive, of the affidavit provided in Section 6552 and signs the affidavit to enroll a minor in school and consent to school-related medical care on behalf of the minor. A caregiver who is a relative and who completes items 1 to 8, inclusive, of the affidavit provided in Section 6552 and signs the affidavit shall have the same rights to authorize medical care and dental care for the minor that are given to guardians under Section 2353 of the Probate Code."

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

DISCUSSION

Student contends that he is entitled to stay put as called for by the June 5, 2018 Amendment IEP. In support of his motion for stay put, Student filed a declaration by Mother and three exhibits: the June 5, 2018 Amendment IEP, the June 8, 2018 Settlement Agreement and Dublin's letter to Mother received by her on July 3, 2018. That IEP offered by Dublin and consented to by Mother, provided for placement at Heritage, a residential treatment center in Utah. Student was placed in Heritage on or about June 28, 2018. For purposes of residency, Student was enrolled at Dublin through a caregiver affidavit executed by his grandmother, which indicated Student resided with the grandmother within the boundaries of Dublin. Dublin's July 3, 2018 letter indicated that Dublin was disenrolling Student from Dublin effective July 10, 2018, since Student was no longer living with his grandmother.

The parties do not dispute that Student is entitled to stay put pursuant to the June 5, 2018 Amendment IEP. Rather, Dublin contends that Student is no longer a resident of Dublin and therefore, Dublin is no longer required to provide Student with special education services. Dublin argues that Student now resides in Heritage, not with his grandmother, and Mother, through the exercise of educational rights in the placement and transportation of Student to Heritage, assumed parental responsibility of Student, shifting Student's residency from grandmother's home to Mother's home. Mother resides outside of the Dublin's boundaries in Concord, California.

This matter is distinguishable from the case of *Student v. Fairfield-Suisun Unified School District et al.*, OAH case number 2010120551, in which Dublin relies on. There, the parent and caregiver unilaterally placed the student in an out-of-state residential treatment center. In addition, transportation of the student to the residential treatment center was arranged and paid for by the parent. The Decision in that case concluded that once the parent "began 'acting like a parent' and made 'educational decisions', the student's residency in that school district under the caregiver affidavit ended."

Here, based on Dublin inability to provide supports and services within its boundaries to meet Student's unique educational needs, Dublin proposed in the June 5, 2018 Amendment IEP to place Student at Heritage. Mother consented to the Amendment IEP. Student was not unilaterally placed at Heritage by a parent or caregiver, but rather through an implemented IEP. Furthermore, Student claims, and Dublin does not dispute, that Student was transported to Heritage at District's expense. Student was educationally placed at Heritage by Dublin for Student to receive special education and related services. Under these circumstances, the fact that Heritage is located outside of Dublin's physical boundaries or that Student is required to reside at Heritage to receive special education and related services, has no bearing on the caregiver affidavit for purposes of compliance with California's residency requirements regarding Student's school attendance at Dublin.

Furthermore, Mother's conduct in consenting to placement at Heritage or signing the settlement agreement did not nullify the caregiver affidavit. Mother attended Student's IEP

team meetings and consented to Student's IEPs while Student was enrolled at Dublin. Dublin accepted Mother's consent to the IEP at all times, without jeopardizing Student's residency at Dublin. Mother's consent to the June 5, 2018 Amendment IEP cannot be treated differently. Finally, Dublin does not explain why the issue of Student's residence and the caregiver affidavit was not addressed in the June 8, 2018 Settlement Agreement, which implies that the status quo of Student's residence in Dublin remained.

Furthermore, a caregiver affidavit attests that a student resides with the caregiver and authorizes a relative caregiver to make medical and dental care decisions for a student. (Fam. Code § 6550, subd. (a).) However, a caregiver affidavit does not suspend a parent's rights over a student; more importantly it does not limit a parent from exercising educational rights." (Fam. Code § 6552 ["Notices: 1. This declaration does not affect the rights of the minor's parents or legal guardian regarding care, custody, and control of the minor, and does not mean that the caregiver has legal custody of the minor."]) Mother's attendance at an IEP team meeting, her consent to the IEPs, and her execution of the settlement agreement under these circumstances does invalidate Student's residency within Dublin pursuant to the caregiver affidavit. Therefore, Dublin remains the responsible local educational agency for purposes of stay put.

ORDER

Student is entitled to stay put pursuant to the June 5, 2018 Amendment IEP to be implemented by Dublin.

IT IS SO ORDERED.

DATE: August 15, 2018

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Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings