

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BAKERSFIELD CITY SCHOOL
DISTRICT; GREENFIELD UNION
SCHOOL DISTRICT; KERN COUNTY
SUPERINTENDENT OF SCHOOLS

OAH CASE NO. 2014040234

ORDER DENYING MOTION FOR
STAY PUT

On April 2, 2014, Student filed a request for due process and mediation, and a motion for stay put. Student supported the motion with a declaration under penalty of perjury by Student's attorney and authenticated exhibits. On April 4, 2014, Greenfield Union School District (Greenfield) and Kern County Superintendent of Schools (KCSOS) filed a response to the motion which was also supported by a declaration under penalty of perjury and authenticated exhibits. On April 7, 2014, Bakersfield City School District (Bakersfield) filed an opposition to the stay put motion, which was supported by a declaration under penalty of perjury. On April 8, 2014, Student filed a Reply to the oppositions filed by Bakersfield, Greenfield and KCOS and objections to KCSOS and Greenfield exhibits. On April 8, 2014, Greenfield and KCSOS filed a supplemental response to Student's motion, supported by a declaration under penalty of perjury with attached exhibit. On April 8, 2014, Student filed another Reply, this time to Greenfield and KCSOS's supplemental response. On April 9, 2014, Bakersfield filed a sur-reply to Student's opposition.

For the reasons discussed below, Student's motion for stay put is denied.

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

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

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.)

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) (2006); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel G v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134.)

DISCUSSION AND ORDER

Student’s complaint alleges that he is eight years old and eligible for special education under the categories of autism and speech. He asserts that he was not placed in school at the time the complaint was filed, that he was dis-enrolled out of school from the Bakersfield and referred to Greenfield where he was allegedly denied services that Parents agreed to in an October 15, 2013 individualized education program (IEP).

In his motion, Student offers excerpts of two documents as attachments to his attorney’s declaration. Exhibit 1 is a one page document entitled IEP Team Meeting Notes, dated August 21, 2013 and it refers to “additions made to 8-14-13.” It is unsigned and does not establish that it was effectively an amendment to any prior agreed upon and implemented IEP. Exhibit 2 is one page of a purported eight page document, entitled IEP Team Amendments Page, dated October 15, 2013, and refers to changes to Student’s April 9, 2013 IEP. This one-page document refers to a review of an occupational therapy assessment and functional analysis assessment, and a settlement agreement dated May 30, 2013. Parents signed this document acknowledging receipt of procedural safeguards, but did not agree to the occupational therapy assessment or to the content of the addendum. Student offered no other evidence to support a determination of what his last agreed upon and implemented IEP was, or that the October 15, 2013 IEP was his last agreed upon IEP. The responding parties dispute that Student’s last agreed upon IEP was the October 15, 2013 IEP.

The evidence offered in support of the motion and the oppositions established that Student dis-enrolled from Bakersfield during the 2013-2014 school year and applied for enrollment at Greenfield on or about March 20, 2014. Greenfield received academic records from Bakersfield on or about March 25, 2014, which included a copy of Student’s April 9, 2013 IEP from Bakersfield. Greenfield reviewed the April 9, 2013 IEP and determined it did not have a comparable placement. On March 31, 2014, Greenfield referred Student to KCSOS for determination of a placement. In the following few days and immediately preceding the filing of the complaint and this motion, KCOS unsuccessfully attempted to coordinate a meeting with Parents for the purpose of developing a thirty-day interim IEP that was comparable to April 9, 2013 IEP, as it may have been amended. Until the time this motion was filed, no interim 30-day agreement had been signed or implemented.

Greenfield's obligation for the first 30 days of Student's inter-district transfer is to provide Student an interim placement comparable to the last IEP in effect. Student transferred between school districts on or about March 20, 2014, and enrolled in Greenfield. The evidence was not clear as to whether Greenfield or KCSOS is now responsible for Student's placement. In either case, Student was enrolled in the local education agency (LEA) for less than 30 days. Therefore, the LEA responsible for his placement is still within the statutory 30-day transfer period described above. Any right to stay put during the 30 day initial enrollment period would be to a program comparable to that provided for in Student's last implemented IEP while he was Bakersfield. (See 20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e) (2006); Ed. Code, § 56325, subd. (a)(1).) However, Student only offered two one-page documents, neither of which support a finding that they would, alone or together, serve as the last agreed upon and implemented IEP. None of the responding parties provided a copy of the April 9, 2013 IEP, which Greenfield and KCSOS contend was the only IEP received from Bakersfield when it requested records. In the absence of any credible and uncontroverted evidence, it is not possible to determine what a comparable program would be for Student during the 30-day interim period.

Accordingly, Student's motion for stay put is denied and his objections to evidence are overruled. If Student should seek to refile its motion for stay put, Student must accompany the motion with a declaration under penalty of perjury and sufficient and authenticated evidence establishing all of the terms of Student's last agreed upon and implemented IEP for purposes of determining what a comparable program should be.

IT IS SO ORDERED.

DATE: April 9, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings