

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 GRANTING STUDENT'S
MOTION FOR STAY PUT

On April 2, 2014, Student filed a request for due process hearing and stay put against respondents Bakersfield City School District (Bakersfield SD), Greenfield Union School District (Greenfield SD) and Kern County Superintendent of Schools (KCSOS). Student's request for stay put was denied on April 9, 2014 because the request was not supported by sufficient admissible evidence of the terms of Student's last agreed-upon and implemented individualized education program to determine a comparable program for stay put purposes.

On April 15, 2014, Student filed a second request for stay put against all three respondents, objecting to proposed placement in a KCSOS special day class and seeking stay put placement in a general education class with a one-on-one aide. Student filed a supporting declaration from Parent on April 18, 2014. Bakersfield SD filed its opposition on April 16, 2014, asserting that Bakersfield SD is not responsible for Student's ongoing special education because Student no longer resides in Bakersfield SD. Greenfield SD and KCSOS filed a joint opposition on April 17, 2014, asserting that the proposed special day class placement corresponds to the terms of Student's last agreed-upon IEP.

As discussed below, Student's motion for stay put is granted as to Greenfield SD and KCSOS, the public agencies currently involved in decisions regarding Student's special education placement and related services, but is denied as to Bakersfield SD, because Student admits that he no longer resides in that district, and offers no evidence or argument for holding Bakersfield SD responsible for Student's ongoing special education placement or related services.

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.)

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.)

Special education due process hearing procedures extend to a student’s parent or guardian, to the student under certain conditions, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) The “public agency” may be “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

DISCUSSION

Student’s complaint alleges that he is eight years old, resides in Greenfield SD, and is eligible for special education under the categories of autism and speech. Prior to enrolling in Greenfield SD in March 2014, Student allegedly was enrolled in Bakersfield SD in a general education placement with a one-on-one aide, pursuant to an October 15, 2013 IEP. Student alleges that, following his enrollment in Greenfield SD, Bakersfield SD disenrolled him, and Greenfield SD on March 31, 2014 unilaterally placed him in county special day class program operated by KCSOS, with no one-on-one aide. Student asserts that he was not attending school at the time the complaint was filed.

In his motion, Student presented an April 9, 2013 IEP prepared by Bakersfield SD, that offered Student placement in a public day school with 10 percent of Student’s time to be spent in the general education environment. Parent signed this on May 3, 2013 and gave consent to the IEP “with the understanding” that Bakersfield SD would make amending changes to the IEP that Parent had discussed in an email with Bakersfield SD’s IEP team representative. Subsequent IEP team meeting notes dated August 21, 2013 list possible changes to Student’s placement and services, including that Student was to be placed in a

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

general education classroom with an instructional aide, but this document was unsigned and is not proof of consent to an amendment of the April 9, 2013 IEP.

A document titled “IEP Team Amendments Page” dated October 15, 2013 set forth changes to the April 9, 2013 IEP, including a change of Student’s placement to a general education class with a one-on-one aide for the 2013-2014 school year. Parent signed this document, but indicated that she did not consent to an already-completed occupational therapy assessment because it was not conducted in accordance with an agreement that Parent apparently reached with Bakersfield SD on May 30, 2013. Parent’s declaration stated that, for Student’s 2013-2014 school year, Bakersfield SD implemented the April 9, 2013 IEP, as amended October 15, 2013, and placed Student in a general education class with a one-on-one aide. The April 9, 2013 IEP also included extended school year services, speech and language services through Student’s next IEP, and occupational therapy services scheduled to conclude in September 2013. The August 21, 2013 IEP Team Meeting Notes and October 15, 2013 IEP Team Amendment also referenced other services that were offered to Student as compensatory education and were therefore not subject to stay put.

Bakersfield SD, Greenfield SD, and KCSOS do not dispute that Student’s placement at Bakersfield SD prior to enrolling at Greenfield SD was in a general education class with a one-on-one aide. Greenfield SD and KCSOS contend that they together reviewed Student’s records, concluded that his last agreed-upon IEP was the April 9, 2013 IEP, without amendment, that offered student placement in a public day school, and offered Student a comparable placement in a KCSOS special day class, without an aide.

Based on the above evidence, Student is entitled to stay put placement and services that approximate as closely as possible those offered in Student’s April 9, 2013 IEP, as amended in the October 15, 2013 IEP Team Amendments Page, and implemented by Bakersfield SD.

Accordingly, Student’s motion for stay put is granted as to Greenfield SD and KCSOS, and denied as to Bakersfield SD.²

ORDER

1. Student’s motion for stay put is granted as to Greenfield SD and KCSOS, and denied as to Bakersfield SD;

² As noted above, Student admitted that Student resides in Greenfield SD and is disenrolled from Bakersfield SD, and offers no evidence or argument that Bakersfield SD is currently responsible for providing Student a special education or related services.

2. Student's stay put will be placement and services that approximate as closely as possible the placement and related services provided for in Student's April 9, 2013 IEP, as amended by the October 15, 2013 IEP Team Amendments Page, specifically including:

- a. Placement in a general education classroom;
- b. a full-time one-on-one classroom instructional aide;
- c. speech and language services, two 30 minutes sessions weekly;
- d. speech and language consultation, once weekly for 10 minutes; and
- e. ESY.

3. All dates in this matter are confirmed.

DATE: April 21, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings