

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LAKESIDE UNION SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014070884

ORDER GRANTING STUDENT
MOTION FOR STAY PUT; DENYING
DISTRICT MOTION FOR STAY PUT

On July 11, 2014, District filed a request for due process hearing seeking a determination that its offer to place Student in a special education special day class, with goals, accommodations and services specified in District's April 7, 2014 IEP, as amended on May 5, 2014, offered Student a free appropriate public education in the least restrictive environment appropriate for Student. On July 25, 2014, Student filed a motion for stay put, seeking stay put placement in a general education classroom in his school of residence. On July 31, 2014, District filed an amended joinder to Student's motion for stay put. District agreed that stay put was appropriate, but disagreed with Student's contentions regarding Student's last agreed-upon and implemented placement. District's amended joinder included a District motion for stay put, seeking stay put placement for Student in a special day class. District's joinder is treated as a District motion for stay put. Each party submitted supporting declarations and exhibits.

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.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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

Where a student has no implemented IEP because he is applying for initial admission to public school, the parents may consent to the student being placed in public school during the pendency of administrative proceedings. In that case, even if the parents disagree with the school's initial proposed placement, the public school becomes the child's "current educational placement" for purposes of a "stay put" action. (*L.M. v. Capistrano Unified Sch. Dist.* (9th Cir. 2009) 556 F.3d 900, 911, citing 20 U.S.C. § 1415(j).)

DISCUSSION

Summary

Student and District agreed to goals, services and accommodations offered in District's April 7, 2014 initial IEP for Student. These were then implemented for the remainder of the 2013-2014 school year in a temporary placement in Student's existing general education classroom in his school of residence. Although Student's goals, services and accommodations were settled, the parties expressly left Student's ongoing placement location open to be finalized at a future IEP team meeting. Subsequently, Student and District never agreed to any permanent placement location for Student, agreeing only to a temporary special day class placement for Student's extended school year. Therefore, Student's last agreed-upon and implemented goals, services and accommodations for stay put purposes are those set forth in Student's April 7, 2014 IEP, and, in the absence of any agreed upon and implemented placement location for the regular school year, Student's placement for stay put purposes remains a general education classroom in his school of residence.

Student's Stay Put Motion

Student contends that Student's stay-put placement should be a general education placement at Student's school of residence, based on Student's consent to that placement on April 10, 2014 after District offered it in Student's April 7, 2014 Initial IEP, or Student's reiterated consent on June 9, 2014 to the same offer of placement made by District on May 19, 2014. Student's supporting declaration and documents are insufficient to sustain a finding that District offered or agreed to place Student in a general education classroom at his school of residence on anything other than a temporary basis. However, that placement is nonetheless Student's stay put placement because it was Student's last placement prior to his contested initial IEP, and because Student had the right to such a placement under the principle set forth in *L.M. v. Capistrano Unified Sch. Dist.*, *supra*, 556 F.3d 900, 911 and Title 20 United States Code section 1415(j), that allows parents to consent to a public school placement while contesting an initial IEP.

Student's initial IEP team meeting was held on April 7, 2014. The meeting notes stated that District was offering Student Learning Center special education program services, (specialized academic instruction on a consult basis), behavior intervention services including a behavior intervention plan and additional adult support intensive social emotional services, social-emotional and behavioral goals and objectives, and accommodations to begin

as soon as parental consent was received. Parent consented to the April 7, 2014 IEP on April 10, 2014. Student's placement was not decided at the April 7, 2014 meeting, and the meeting notes state that the IEP team would meet again on May 5, 2014 to discuss and finalize a special education placement location. The IEP's first page of Student Information and Services specified that Student would receive 15 minutes per week of specialized academic instruction consultation to be provided by District in Student's general education class, 360 minutes per month of intensive social emotional counseling and guidance services to be provided by King's View in a separate class, 40 minute per month of intensive social emotional social work services to be provided by King's View in Student's general education class, and 60 minutes per week of behavior intervention services to be provided by District in Student's general education class. Although the Student Information and Services page indicated a May 5, 2014 end date for Student's services, the goals to be addressed by these services were expressly annual, and the meeting notes indicated that only Student's placement location was left open to be determined at a future meeting. The totality of the evidence presented indicates that the goals, accommodations and services offered by District were not intended to be temporary. An April 22, 2014 letter from District's counsel to Student's counsel indicated that the offered goals and services were being implemented in Student's existing general education classroom. .

When Student's IEP team reconvened on May 5, 2014, meeting notes state the District's offer to place Student at a special day class for students with social-emotional and behavioral issues operated by District's special education local plan area, Kern County Superintendent of Schools (KCSOS), beginning May 12, 2014 for the extended school year. The IEP team was to reconvene toward the end of the extended school year to discuss progress and reconsider Student's placement for the fall. In response to a letter from Student's counsel, District on May 19, 2014 sent Parent a revised IEP that allowed Student to complete the remainder of the school year ending May 30, 2014 at his school of residence, and attend the KCSOS extended school year special day class from June 16, 2014 to July 11, 2014. Placement for the 2013-2014 school year was to be decided at an IEP team meeting being scheduled for the last week of the extended school year.

Student's counsel wrote District counsel on June 9, 2012, consenting to implementation of the District's May 19, 2014 IEP offer on condition that the District acknowledge that, in the event of a dispute, Student's stay put for the 2014-2015 school year would be his school of residence. On June 12, 2014, Student's counsel again wrote District's counsel, transmitting a signed IEP that included an attachment stating that Parent's consent to the IEP was based on "the agreement that [Student's] 'stay put' placement is the general ed class," and certain specified services. Student's counsel requested that District implement Student's IEP immediately. Student's counsel also wrote that, in response to District's request that Parent rescind her request for an independent educational evaluation, Parent would agree to extend the deadline for District's response to the independent evaluation request to July 12, 2014.

District's counsel responded in an email on June 12, 2014, stating that the parties had no agreement on the stay put or independent educational evaluation issues, because a District

offer communicated by counsel on July 11, 2014 (and not offered in evidence by either party) to allow stay put to be “the prior services and placement” was conditioned on Parent’s withdrawal of her request for an independent evaluation of Student. District counsel further stated, “Until agreement is reached on that issue stay put will remain the last agreed-upon and implemented placement If [Parent] has [Student] attend the [emotional disturbance] program for [the extended school year], then the [emotional disturbance] program would be the stay put placement. If [Parent does not], then the prior services would be the stay put placement.” Neither party offers evidence of what District counsel meant by “the prior services.” There is no evidence of any response on behalf of Student to the June 12, 2014 letter, but Student attended the offered extended school year program on 18 days from June 23, 2014 to July 11, 2014.

The evidence is not sufficient to support Student’s contention that Student and District agreed on a placement for Student that was more than temporary and qualified as stay put. Prior to his initial IEP commenced April 7, 2014, Student had no IEP, and no placement or services made pursuant to an IEP. District ultimately allowed Student to complete the 2013-2014 school year at his preexisting general education placement in his school of residence, but, even if that placement were to be treated as an agreed-upon placement made pursuant to Student’s IEP, it was, under the terms of District’s May 19, 2014 offer, clearly temporary, to be followed by an extended school year placement and a further IEP to decide on placement for the 2014-2015 school year.

The evidence also does not support a finding that District agreed to Student’s counsel’s June 9 and 12, 2014 characterizations of Student’s stay put placement as a general education class. District counsel’s June 12, 2014 email suggested that District had made an offer to allow stay put to be Student’s “prior services and placement” if Parent withdrew her request for an independent educational evaluation of Student, but the email states that no agreement was made because Parent did not withdraw her request. Also, even if Parent had withdrawn that request, the District’s offer in return was too vague to be enforceable, because it is unclear whether District’s reference to “prior services and placement” was to a general education placement with the services described in Parent’s June 12, 2014 attachment to Student’s IEP, or to some other program of placement and services.

Because Student’s initial IEP team, including Parent, never agreed to and implemented an ongoing placement for Student, Student’s pre-existing placement in a general education classroom in his school of residence qualifies as Student’s stay put placement, because it was Student’s last placement prior to Student’s contested initial IEP. (See 20 U.S.C. § 1415(j) & *L.M. v. Capistrano Unified Sch. Dist.*, *supra*, 556 F.3d at p. 911.)

Student’s stay put goals, services and accommodations are those set forth in Student’s April 7, 2014 IEP, agreed-to by Student on April 10, 2014, and thereafter implemented by District.

Student's motion for stay put is therefore granted.

District's Stay Put Motion

District contends that Student's last agreed-upon program of placement and services pursuant to an IEP was Student's 18-days in the KCSOS extended school year program for emotionally disturbed students. District contends that the extended school year program was offered pursuant to an annual offer. Also, District contends that the extended school year program should be used as stay put for the regular school year because, unlike extended school year programs that are intended to prevent regression and therefore utilize a different program from that implemented during the regular school year, the KCSOS extended school year program was not fundamentally different from the program that would be implemented during the school year.

District's contentions regarding stay put are not supported by the evidence. District's May 19, 2014 letter to Parent transmitted a revised IEP that offered placement in the KCSOS extended school year special day class from June 16, 2014 to July 11, 2014, but District specified that placement for the 2013-2014 school year was to be decided at an IEP team meeting being scheduled for the last week of the extended school year. The extended school year placement was clearly temporary and was not intended to apply for the 2014-2015 school year.

Similarly, District did not offer evidence that Parent ever agreed to District's assertion that Student's attendance in the KCSOS extended school year program would make that program stay-put for the 2014-2015 school year.

District's motion for stay put is therefore denied.

ORDER

1. Student's motion for stay put is granted. Student's stay put placement until due process hearing procedures on this matter are completed is a general education classroom in Student's school of residence. Student's stay put goals, services and accommodations are those set forth in Student's April 7, 2014 IEP, with services to include 15 minutes per week of specialized academic instruction consultation, 360 minutes per month of intensive social emotional counseling and guidance services, 40 minute per month of intensive social emotional social work services, and 60 minutes per week of behavior intervention services to be provided by District in Student's general education class.
2. District's motion for stay put is denied.

DATE: August 06, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings