

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROSEVILLE JOINT UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2014080829

ORDER GRANTING MOTION FOR
STAY PUT

On August 20, 2014, Student filed a motion for stay put with the Office of Administrative Hearings, naming the Roseville Joint Union High School District, which contended that her last agreed upon and implemented educational program is the May 13, 2014 IEP. On August 25, 2014, Roseville filed an opposition on the ground that it may switch Student's applied behavior analysis provider. Student submitted a reply brief on August 26, 2014.

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.)

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); 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.)

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

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. Sex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-1135.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 .) “The stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances.” (*Ibid.*) When a student’s “current educational placement” becomes unavailable, the local agency must provide the student with a similar placement in the interim. (See *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533.)

Generally, if an IEP calls for non-public agency services but no particular NPA is named, a district has unilateral authority to replace an NPA provider. (*Z.F. v. Ripon Unified School Dist.* (E.D.Cal., Jan. 9, 2013, No. 2:11–CV–02741) 2013 WL 127662, p. 6 (*Ripon*); *Student v. Ripon Unified School Dist.*, Cal. Offc.Admin.Hrngs. Case No. 2011030842, Order Denying Motion for Stay Put (April 12, 2011).²) If, however, an NPA is identified in the IEP as the provider of services, that particular NPA is part of Student’s stay put placement. (See *Joshua A. v. Rocklin Unified School Dist.* (E.D.Cal., Aug. 20, 2007, No. CV 07-01057) 2007 WL 238968, pp. 2-4, *affd.* (9th Cir. 2009) 559 F.3d 1036 (*Joshua A.*); see also *Student v. San Francisco Unified School Dist.* (Aug. 26, 2011) Cal.Offc.Admin.Hrngs. Case No. 2011071058, Order Granting Motion for Stay Put [non-public school identified in IEP]; *Student v. San Francisco Unified School Dist.*, Cal.Offc.Admin.Hrngs. Case No. 2011060361 (Aug. 5, 2011) Order Granting Motion for Stay Put [same].)

DISCUSSION

Student and her former school district, Eureka Union School District, agreed upon an IEP on May 13, 2014. Because Eureka only goes through grade eight, Student would then feed into Roseville for high school. Both school districts are in the same special education local plan area. At issue in Student’s motion for stay put is whether Roseville must provide ABA services through Center for Autism and Related Disorders. The services at issue are an one-to-one aide, clinic meetings, program supervision, classroom collaboration and consultation and extended school your services. Student contends that Roseville is required to provide the specified services through CARD.

Student asserts that CARD providing the requested IEP services are the last agreed upon and implemented educational program. (*Student v. Elk Grove Unified School Dist.* (July 8, 2014) Cal.Offc.Admin.Hrngs. Case No. 2014070177, Order Granting Motion for Stay Put (*Elk Grove*).) However, unlike *Elk Grove* that Student cites to in support of her

² California Code of Regulations, title 5, section 3085 provides that decisions rendered in a special education matter shall be considered persuasive authority in subsequent proceedings.

position, CARD is not specified as the service provider on the May 13, 2014 IEP, just an NPA that has a contract with the SELPA. In *Elk Grove*, student's IEP specified services at the CARD clinic and certain goals were labeled as 'CARD' goals. Thus, in *Elk Grove* it was clear that CARD with the stay put service provider.

Roseville contends that because CARD was not specified on Student's IEP, that it can choose another SELPA contracted NPA to provide the IEP services, relying on *Ripon*. (*Ripon, supra*, p. 5.) However, unlike *Ripon*, Roseville is still able to contract with CARD to provide the IEP services according to Roseville's opposition brief. Also, in *Ripon*, the school district tried to work with parent to develop a transition plan for the switch in providers and school district had evidence that student had no significant problem with several changes of aides with the terminated agency. (*Ripon, supra*, p. 2 and 7.) In this case, Roseville did not attend the May 2014 IEP team meeting held by Eureka, even though invited, to develop a transition plan, instead waiting close to the start of school to convene an IEP team meeting. Also, Roseville does not present evidence that Student would not have significant problem with a change of service providers.

The purpose of stay put is not only to prevent a school district from unilaterally changing the status quo during the legal process, without a requirement to establish harm to the student caused by a change in the educational program. (*Joshua A. v. Rocklin Unified Sch. Dist.* (9th Cir.2009) 559 F.3d 1036, 1037.) However in the present case where it is not clear that the status quo is CARD versus an NPA with a SELPA contract, Student's demonstrated need for continuity of service provider, as set forth in Mother's declaration, tips the balance of equities in Student's favor for stay put. Additionally, Roseville's failure to develop a transition plan and lack of information as to whether a change of service providers create the risk of significantly harm to Student during the pendency of this action. Accordingly, Student established that CARD is her stay put service provider.

ORDER

Student's motion for stay put is granted. Roseville shall contract with CARD through the SELPA master contract to provide Student with a one-to-one aide, hold clinic meetings, provide program supervision, classroom collaboration and consultation, and extended school your services as specified in the May 13, 2014 IEP.

DATE: August 28, 2014

/s/

PETER PAUL CASTILLO

Administrative Law Judge

Office of Administrative Hearings