

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014100324

ORDER GRANTING IN PART AND
DENYING IN PART STUDENT'S
MOTION FOR STAY PUT

On October 7, 2014, Student filed a request for due process hearing (complaint) along with a motion for stay put, naming the Oakland Unified School District. Student contends that his stay put placement is determined by his last agreed upon and implemented individualized educational program, dated October 15, 2013. Student contends that the placement defined by this IEP is in a day treatment program in a special day class at an Oakland Unified integrated elementary school campus. Although Student acknowledges that the exact program he was in during the 2013-2014 school year has closed, Student contends that Oakland Unified improperly removed him from this program for the 2014-2015 school year. Student requests an order that Oakland Unified maintain him at this stay put placement during the pendency of this due process case. Although Student states in his motion for stay put that he attached a copy of his latest IEP, no copy was included with his motion or with his complaint.

On October 10, 2014, Oakland Unified filed a "non-opposition" to Student's motion for stay put. However, although called a "non-opposition" pleading, Oakland Unified takes the position that Student has mischaracterized his stay put placement. Oakland Unified agrees that the October 15, 2013 IEP defines Student's stay put, but states that Student's last placement was at a school campus run by the East Bay Agency for Children, although the class was staffed by Oakland Unified teachers. Oakland Unified states that there were no general education students on that campus. Oakland Unified attached a copy of Student's October 15, 2013 IEP, which supports this contention.

Oakland Unified states that the East Bay Agency for Children program attended by Student closed at the end of the 2013-2014 school year. Oakland Unified states that it has offered Student placement in an East Bay Agency for Children program, which is being offered at Oakland Unified's Lafayette Elementary school for the 2014-2015 school year. Oakland Unified contends that this placement constitutes Student's stay put as his exact placement from last school year no longer exists.

On October 14, 2014, Student filed a response to Oakland Unified's notice of non-opposition. Student attached a copy of his October 15, 2013 IEP. Student states he has been without a school placement since the beginning of the 2014-2015 school year. Student does not oppose Oakland Unified's offer of placement at Lafayette Elementary School as long as the provisions of his pertinent IEP are implemented in full. However, Student contends that in addition to the services stated on his IEP, he requires a staff escort from the transportation drop-off point to his classroom due to the fact that the Lafayette Elementary School campus is larger than his previous school's campus.

APPLICABLE LAW AND DISCUSSION

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); 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 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.)

It does not violate stay put if a school is closed and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].)

Here, both parties agree that the East Bay Agency for Children program Student attended last year is no longer operating. Student does not oppose placement at Lafayette Elementary School, where Oakland Unified contends Student's previous day treatment program is available.

Student's placement and services, as stated in his October 15, 2013 IEP, which both parties agree is Student's last agreed upon and implemented IEP, are the following. The placement and services constitute Student's his stay put:

1. Placement in a day treatment program in a special day class for 360 minutes a day, five days a week, at a public school campus.

2. Group language and speech services for 45 minutes, one time per week.
3. Individual counseling services for 60 minutes, one time per week.
4. Special transportation to and from school in an Oakland Unified provided vehicle.
5. The accommodations, modifications, and supports listed on page eight of the IEP.
6. Implementation of the Behavior Support Plan listed on pages nine to 11 of the IEP.
7. Implementation of the goals listed on pages 12 to 17 of the IEP.

However, Student's IEP does not contain any provision for a special escort for Student from the transportation drop-off site to Student's classroom. Student is requesting implementation of an additional service that does not constitute part of his stay put placement. Student's request to add this service as part of his stay put is therefore denied.¹

ORDER

1. Student's motion for stay put is partially granted. Oakland Unified shall forthwith implement all provisions of Student's October 15, 2013 IEP, including transportation to and from school, at Lafayette Elementary School.
2. Student's request to add the additional service of a personal escort for Student from the transportation drop-off site to Student's classroom is denied.

DATE: October 15, 2014

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

¹ It is of course Oakland Unified's obligation to ensure Student's safety when he transitions from the transportation drop-off site to his classroom and from the classroom to the transportation pick-up site.