

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ROSEVILLE JOINT UNION HIGH
SCHOOL DISTRICT.

OAH Case No. 2014080829

ORDER DENYING STUDENT'S
MOTION FOR STAY PUT

On October 8, 2014, Student filed a motion for stay put.¹ On October 13, 2014, Roseville Joint Union High School District filed an opposition to the motion.

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); 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 pupil’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.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) 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 [“stay put” placement was

¹ This is Student’s second stay put motion. Student filed a prior motion which dealt with Student’s applied behavior analysis services. This second motion addresses Student’s speech and language services.

advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.])

DISCUSSION

This case involves a pupil who matriculated from the elementary school district to the high school district (Roseville). This stay put dispute revolves around which entity should provide Student's speech and language services.

As both Student and Roseville acknowledge, Student's last IEP at the elementary school district called for Student to receive speech and language services from a "Nonpublic school . . . under contract with SELPA or district." Student had, in fact, received speech and language services provided by Student's nonpublic school in the past.

According to Student, the individual employee who provided the speech and language services at the nonpublic school left that school to go to work for Easter Seals, a nonpublic agency. Although Student's IEP did not call for it, the elementary district then contracted directly with Easter Seals to provide speech and language services to Student through that same individual. That arrangement was never memorialized in an IEP document.

Student contends that her stay put includes speech and language services provided by Easter Seals. Student maintains that Student has difficulties with changes. Student believes that, if the speech and language provider is changed now, Student will suffer regression.

Roseville agrees that Student is entitled to speech and language services as part of stay put, but contends that those services should be provided by a nonpublic school under contract with Roseville, as set forth in Student's IEP.

Under the facts of this case, Roseville's argument carries more weight. As a general rule, unless a particular provider is named in an IEP, a new school district may use a different provider, as long as the services remain the same. (See *Z.F. v. Ripon Unified School District* (E.D. Cal. 2013) 2013 WL 127662.) In the instant case, Student's IEP did not call for her to receive speech and language services through Easter Seals. Indeed, the use of Easter Seals might even be considered contradictory to the IEP terms, because Easter Seals is a nonpublic agency, not a nonpublic school. Under the terms of Student's IEP, there is no obligation for Roseville to contract with Easter Seals to provide the service.

ORDER

Student's motion for stay put is denied. Roseville has no obligation to contract with Easter Seals to provide speech and language services for Student as part of stay put.

DATE: October 23, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings