

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014100301

ORDER GRANTING MOTION FOR
STAY PUT

On October 6, 2014, Student filed a motion for stay put. On October 9, 2014, District filed an opposition. On October 15, 2015, Student filed a response to District's opposition.

Thereafter, on October 21, 2014, OAH issued an order requesting additional documents be provided to OAH by the close of business on Friday, October 24, 2014.

On October 27, 2014, Student provided additional documents to OAH, including: pages 1 to 18 of the May 20, 2014 IEP and pages 1 to 3 of the February 11, 2014 Amendment to the May 22, 2013 IEP.

On October 27, 2014, District provided additional documents to OAH, including: pages 1 to 16 of the May 22, 2013 IEP and pages 1 to 3 of the February 11, 2014 Amendment to the May 22, 2013 IEP.

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.)

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

Where controversy arises regarding the physical component of an order to stay put, the Ninth Circuit looks to the IEP to determine the “then current educational placement.” (*Joshua A. v. Rocklin Unified School Dist.* (E.D. Cal., Aug. 20, 2007, No. CV 07-01057) 2007 WL 2389868, pp. 2-4, *affd.* (9th Cir. 2009) 559 F.3d 1036 (*Joshua A.*)). 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, 1133-1135.) 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 [“stay put” placement was 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 (2006)[discussing grade advancement for a child with a disability.]) And it does not violate stay put if a school is closed for budget reasons 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.)

Generally, if an IEP calls for non-public agency services but no particular agency is named, a district has unilateral authority to replace the nonpublic agency provider. (*Z.F. v. Ripon Unified School Dist.* (E.D.Cal., Jan. 9, 2013, No. 2:11-CV-02741) 2013 WL 127662, p. 6; *Student v. Ripon Unified School Dist.*, Cal. Offc.Admin.Hrngs. Case No. 2011030842, Order Denying Motion for Stay Put (April 12, 2011).)

If, however, an agency is identified in the IEP as the provider of services, that particular agency is part of Student’s stay put placement. (See *Joshua A. supra*, 2007 WL 2389868 at pp. 2-4; see also *Student v. San Francisco Unified School Dist.*, Cal.Offc.Admin.Hrngs. Case No. 2011071058, Order Granting Motion for Stay Put, (Aug. 26, 2011) [non-public school identified in IEP]; *Student v. San Francisco Unified School Dist.*, Cal.Offc.Admin.Hrngs. Case No. 2011060361, Order Granting Motion for Stay Put (Aug. 5, 2011) [same].)

DISCUSSION

The single issue presented in this stay put motion is whether Student’s last implemented IEP requires Student’s behavior intervention services and supervision be provided by a particular agency. Student contends District has unilaterally changed Student’s behavior services provider from the Center for Autism Related Disorders (CARD) to another provider in violation of his right to stay put. District contends Student’s IEP does not specify a particular provider, it is not practicable to provide services through CARD because District has terminated its contract with CARD, and District has provided, and continues to make available, behavior intervention services through another agency. For the reasons set forth below, Student’s motion for stay put is granted.

Here, the last implemented IEP is the amendment, dated February 11, 2014, that incorporated by reference and modified the May 22, 2013 IEP. The February 11, 2014 IEP names CARD as the provider for supervision of the behavioral services component of Student's IEP, and provides that CARD will remain the behavioral service provider for the balance of the school year. It is also undisputed that CARD provided the underlying behavioral services to Student throughout the 2013-2014 school year. The IEP Team Meeting Notes from the May 22, 2013 IEP also indicated that a meeting is to be scheduled with the CARD Supervisor to discuss the next school year, reinforcing the inference that CARD was an important part of Student's behavior services placement. Although, a subsequent IEP meeting was held on May 20, 2014, it is undisputed that the resultant IEP was not agreed to by Student, so those discussions, whether resulting in an IEP or not, have no bearing on the stay put issue.

As referenced, above, in *Joshua A.*, the Court held that a named provider in the last agreed to IEP is part of the stay put placement for a student. Here, the May 22, 2013 IEP and the subsequent amendment of February 11, 2014 both name CARD as the provider, and thus, CARD is part of the stay put placement for Student until the conclusion of this case.

Accordingly, Student's stay put during the pendency of this due process complaint is the February 11, 2014 amendment to the May 22, 2013 IEP as previously implemented by District, including the provision of any required behavior services by CARD.

ORDER

1. Student's stay put motion is granted.
2. Student's stay put shall be the placement and related services in the February 11, 2014 amendment to the May 22, 2013 IEP as it was implemented by District during the 2013-2014 school year.
3. Consistent with this Order, the District shall promptly employ or contract with Center for Autism Related Disorders to implement the behavior services required by Student's February 11, 2014 amendment to the May 22, 2013 IEP while this dispute is pending.

DATE: October 28, 2014

/s/

TED MANN
Administrative Law Judge
Office of Administrative Hearings