

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014101023

ORDER GRANTING MOTION FOR
STAY PUT

On February 27, 2015, Student filed a motion for “stay put” with the Office of Administrative Hearings, naming the Twin Rivers Unified School District. On March 4, 2015, Twin Rivers filed a responsive brief. On March 6, 2015, Twin Rivers filed a supplemental brief with newly discovered information.

APPLICABLE LAW

A special education pupil is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures 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); 48915.5.) This stay put law operates automatically upon the due process filing. (See *Casey K. v. St. Anne Community High School District No. 302* (7th Cir. 1998) 400 F.3d 508, 511.) 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 Board of Education* (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.) Because stay put is automatic, an order is required only if there is a dispute as to the stay put placement.

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

DISCUSSION

Student's request for a due process hearing (complaint), filed on October 22, 2014, alleges that she is 18 years old and has been placed by Twin Rivers at the Odyssey Learning Center, a nonpublic school, pursuant to a settlement agreement. Student is eligible for special education under the category of Other Health Impairment, based on medical diagnoses of tuberous sclerosis, including tumors in both kidneys; seizure disorder; lupus erythematosus; Von Willebrand disease; attention deficit hyperactivity disorder; and asthma. Her secondary eligibility is under the category of intellectual disability. Twin Rivers submitted Student's operative IEP dated January 27, 2015, which includes a behavior intervention plan, a health care plan, and assessment results.

Student claims Twin Rivers denied her a free appropriate public education during the 2014-2015 school year for nine specified reasons, including a "disintegrating placement;" lack of a qualified teacher; lack of a one-to-one para-educator; lack of related services required by her IEP, including behavior and speech therapy services; and exposure to risk and injury.

Student has established that there is a dispute related to her stay put placement. Twin Rivers informed Parent, on or about February 25, 2015, that Odyssey issued a notice to terminate its individual service agreement for Student's enrollment as of March 8, 2015. Further, Student claims Odyssey and Twin Rivers did not provide Parent with 20-days written notice or schedule an IEP team meeting regarding her placement. Odyssey's letter, dated February 13, 2015, indicated that Student's placement is no longer appropriate because "Odyssey does not have medical staff to support medically fragile students such as [Student]."

Twin Rivers' initial response to OAH indicates that it is negotiating with Parent to find an alternative nonpublic school placement for Student, and with Odyssey to extend its deadline for termination until at least March 20, 2015. Twin Rivers argues that Student's placement in her operative IEP is at a nonpublic school, and the "location" of her placement at Odyssey may be changed without constituting a change of her educational placement.

Under California law, "either party" to the master contract is allowed to terminate a pupil's placement for cause with 20-days notice. (Ed. Code section 56366, subd. (a)(4).) Parents are not parties to the contract. Twin Rivers has submitted selected pages of its master contract with Odyssey. Section 14 of the master contract provides that the master contract or an individual service agreement for a particular pupil may be terminated for cause on 20-days written notice to the other party.

In the supplemental response, Twin Rivers represents that it has just located its individual services agreement to place Student at Odyssey, and attached a copy. Of note, the individual services agreement contains a provision to permit its termination as determined by the pupil's IEP team. This provision is consistent with Education Code section 56366, subdivision (a)(3), and is distinct from termination for cause permitted by subdivision (a)(4).

In addition, Section 6 of Twin Rivers' master contract with Odyssey provides as follows:

If a parent or LEA [local education planning area] contests the termination of an ISA [individual service agreement] by initiating a due process hearing with the OAH, CONTRACTOR shall abide by the "stay – put" requirement of state and federal law unless the parent agrees otherwise or an interim alternative educational placement is deemed lawful and appropriate by LEA or OAH. CONTRACTOR shall adhere to all LEA requirements concerning changes in placement.

In the circumstances of this case, Student's complaint was filed in the fall of 2014, prior to Odyssey's actions in February 2015, terminating Student's service agreement. Nevertheless, Odyssey's actions occurred during the pendency of this dispute, precisely when stay put is applicable. Twin Rivers has established that the nonpublic school in which it placed Student pursuant to her January 2015 IEP has exercised its legal right to terminate Student's individual service agreement for cause. Odyssey provided at least 20-days notice to Twin Rivers of the termination as required by law, and was not required to provide 20-days notice to Parent.

However, to date, Twin Rivers has not located a nonpublic school to change the location for Student's receipt of her IEP special education and related services. The law requires such a placement to be comparable to that offered in her IEP. Twin Rivers cannot demonstrate a comparison of the current and proposed placements for purposes of stay put because there is no new proposed school. Finally, OAH does not have jurisdiction under the special education laws to issue orders to Odyssey. Nevertheless, Section 6 of Twin Rivers' master contract addresses the relationship between Twin Rivers and Odyssey during the pendency of this proceeding. Based on the foregoing, Student's motion for stay put is granted.

ORDER

1. Student's motion for stay put is granted.
2. During the pendency of this action, Twin Rivers shall maintain Student in her current educational placement at Odyssey until it offers and Parent accepts an alternate, comparable nonpublic school placement for Student.

3. In the event of a dispute regarding Twin Rivers' offer of an alternate placement for Student, either party may file a motion with OAH to reconsider or modify this stay put order.

Dated: March 13, 2015

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings