

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ANAHEIM UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2015110535

ORDER GRANTING MOTION FOR
STAY PUT

On November 16, 2015, Student filed a motion for stay put at Rossier Park Nonpublic School. On November 20, 2015, District filed an opposition claiming that Student is not entitled to stay put. District argues that because Student is a “new” student in District as of the end of the 2014-2015 school year, and District belongs to a different special education local area plan than his previous elementary school district, he is not entitled to stay put.

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, subd. (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 G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds (*Vashon Island*), 20 U.S.C. § 1414(d)(1)(B).) However, in *Vashon Island* the court also states:

¹ All references to the Code of Federal Regulations are to the 2006 edition.

We hold that when a dispute arises under the IDEA involving a transfer student, and there is disagreement between the parent and student's new school district about the most appropriate educational placement, the new district will satisfy the IDEA if it implements the student's last agreed-upon IEP; but if it is not possible for the new district to implement in full the student's last agreed-upon IEP, the new district must adopt a plan that approximates the student's old IEP as closely as possible. The plan thus adopted will serve the student until the dispute between parent and school district is resolved by agreement or by administrative hearing with due process.

(*Ibid*, at 1134.)

Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School 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 [discussing grade advancement for a child with a disability].) Similarly, 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; 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].

For students transferring from an elementary school district to a high school district, California Code of Regulations, title 5, section 3024, subdivision (b) governs the transfer and requires the elementary school district to invite the high school district to the transition IEP meeting, which shall specify the appropriate high school placement. A school district shall ensure that a student within its jurisdiction who has an IEP shall have an operative IEP upon the start of the school year. (Ed. Code § 56344, subd. (c).)

DISCUSSION

Student was enrolled as a student in the in the Anaheim City Elementary School District from at least 2009. Pursuant to his IEP as a student of Anaheim City, Student was placed at Rossier Park Nonpublic School in October 2011, and remained placed there until the end of the 2014-2015 school year. Anaheim City is a kindergarten through sixth grade school district. When Anaheim City students complete sixth grade, they transfer into District which provides services to students in grades seven through 12 who reside within its boundaries. District has refused to fund Student’s placement at Rossier Park. Therefore

Student has filed a motion for stay put, asking that District fund placement at Rossier Park for the pendency of these proceedings. Student has not attended school since the beginning of the 2015-2016 school year.

In May 2015, an IEP team meeting was held to discuss Student's transition into District. Because Student was entering the seventh grade for the 2015-2016 school year this transition meeting was required. At this meeting an IEP was developed by Anaheim City for the rest of the 2014-2015 school year, which was consented to by Parents. This IEP is on Anaheim City forms, and calls for Student to continue his placement at a nonpublic school for the rest of the school year, with Rossier Park noted to be the nonpublic school he was currently attending. This is the placement noted on the services page of the IEP.

The notes of the IEP team meeting in May 2014 reflect the attendance of Lauren Klatzker from District. The typed notes also reflect that Ms. Klatzker "offered" Student placement in an "Autism Focus" classroom located on one of its junior high school campuses. The Anaheim IEP notes reflect in typing that District also offered Student "Specialized Academic Instruction; Counseling Services; Transportation [door to door] and Extended School Year Services." A handwritten note beside this typewritten "offer" states "See services page of IEP." As previously noted, the services page of the IEP shows Student being placed a nonpublic school, with Rossier Park noted as the nonpublic school he is attending. District did not develop its own independent IEP document.

Parents wrote on the IEP that they did not consent to District's offer of placement in the Autism Focus classroom at a junior high school. However, they did sign consent to the IEP as it pertained to Student up to the end of the 2014-2015 school year. Therefore, the last signed and implemented IEP calls for Student to be placed at a nonpublic school.

District's arguments in its opposition to the motion for stay put are not persuasive. In its opposition, District argues that Student should be treated as if he moved into the boundaries of a new school district in between school years, and thus District is not obligated to implement the IEP from the previous school district of residence. Therefore, District claims that *Vashon Island* does not apply, and cites multiple OAH orders denying motions for stay put in support of this argument. However, an ALJ is not bound by these orders. (5 C.C.R. § 3085.) Further, most of the OAH orders cited by District are factually distinguishable from the this case.

Applying the principles of *Vashon Island* to this case, the District must establish that it is not possible to implement the placement for Student at the nonpublic school. District has not established this. Student has not physically moved from the boundaries of one school district to another. There is no evidence that the nonpublic school has either closed or will not accept Student this year. .

If Student resided in a unified school district that served students in grades kindergarten through 12, there would be no question that Student's stay put placement was a nonpublic school, as called for on the services page of the May 2015 IEP. Student should

not now be required to attend a program in a public school simply because he resides in a location served by two separate school districts, one for elementary school children, and the other for secondary students.

As previously noted, the IEP of May 2015 was signed by Parents and implemented. Pursuant to its terms Student attended Rossier Park to the end of the 2014-2015 school year. This is not only the last implemented IEP for Student, but also is the only IEP that was in place at the beginning of the 2015-2016 school year. Unlike some of the OAH cases cited by District in its opposition, there was no formal IEP offer by District at the time of the IEP team meeting in May 2015, or at any time thereafter.

Because Student attended Rossier Park continuously from October 2011 to the end of the 2014-2015 school year, and the IEP makes it clear that this was the nonpublic school he attended as a student of Anaheim City with an IEP, the stay put placement for Student is Rossier Park, and District shall fund this placement. If for some reason Student cannot enroll at Rossier Park, a similar nonpublic school placement must be found for Student, and shall be funded by District as his stay put placement.

ORDER

1. Student's motion for stay put at Rossier Park is granted.
2. District shall fund Student's placement at Rossier Park as his stay put placement for the pendency of this matter. If Student cannot enroll in Rossier Park, District shall fund Student's placement in another similar nonpublic school.

IT IS SO ORDERED.

DATE: November 23, 2015

/s/
REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings