

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CHULA VISTA ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2021080257

ORDER GRANTING MOTION FOR STAY PUT

AUGUST 13, 2021

On August 6, 2021, Student filed a motion for stay put. No response was received from Chula Vista Elementary School District, called Chula Vista.

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 last agreed upon and implemented individualized educational program, called IEP, placement 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).)

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student’s old special education program, as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, 20 U.S.C. § 1414(d)(1)(B).)

DISCUSSION

Student’s motion for stay-put is supported by sworn declaration of Parent and a copy of Student’s last consented to, addendum individualized Education Program, called IEP, dated April 30, 2021, placing Student in a nonpublic day school. Parents signed their consent to the addendum IEP on May 4, 2021. The addendum IEP amended Student’s November 12, 2020 IEP. The addendum IEP lists the nonpublic school placement as starting on November 12, 2020 and ending on 11/12/2021. Parent asserts that the offered nonpublic school placement was implemented for the remainder of the 2020-2021 school year, following Parent’s May 4, 2021 consent. Student’s motion for stay-put alleges that Parents informed Chula Vista on June 1, 2021, in an email, that Student would be transferring to Chula Vista, and attached the April 30, 2021 IEP to the email.

Student’s November 20, 2020 IEP as amended on April 30, 2021, requires Student to be placed in a nonpublic school, including 1,850 minutes per week of group

specialized academic instruction, 120 minutes per month of language and speech therapy, 120 minutes per month of occupational therapy, transportation to and from the nonpublic school, and specific accommodations.

Parents allege that Chula Vista did not respond for the remainder of the 2020-2021 school year. Parents allege that on July 21, 2021, Chula Vista unilaterally placed Student in general education for 100% of the school day, at his home. Parents filed a Due Process Hearing Request naming Chula Vista and a Motion for Stay-Put on August 6, 2021, with proof of service for both to Chula Vista by facsimile. No response was filed by Chula Vista. Although Student alleges that Chula Vista placed Student in a 100% general education home placement, there was no evidence that Chula Vista offered that as Student's Stay-Put placement. Accordingly, no analysis or determination of whether Chula Vista's placement of Student approximates his April 30, 2021 placement is reached. Student's April 30, 2021 addendum IEP placement is Student's current educational placement. The parties have not agreed to an alternate Stay-Put placement to Student's current educational placement in a nonpublic school. Accordingly, Student's Motion for Stay-Put is granted.

ORDER

Chula Vista shall immediately facilitate Student's Stay-Put placement in a nonpublic school or other placement that approximates Student's April 30, 2021 addendum IEP nonpublic school placement.

IT IS SO ORDERED.

Rita Defilippis

Rita Defilippis

Administrative Law Judge

Office of Administrative Hearings