

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

FREMONT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021090525

ORDER GRANTING MOTION FOR STAY PUT

SEPTEMBER 21, 2021

Student filed a motion for stay put concurrently with a request for due process hearing on September 15, 2021. District filed an opposition to the stay put motion on September 20, 2021.

Student transitioned from middle school at Cupertino Union School District to Fremont Union High School District at the beginning of the 2021-2022 school year. Student had an individualized education program, called IEP, at Cupertino. Cupertino held an IEP team meeting on February 25, 2021 and offered an IEP to which Parent consented on April 19, 2021. The IEP included behavior intervention services by a behavior specialist for a total of 1690 minutes through February 25, 2022.

Cupertino held a transition IEP team meeting in May 2021 at which Fremont staff attended. Fremont offered Student an IEP for high school to which Parent did not consent. The May 10, 2021 IEP included behavior intervention services by a behavior specialist for 2020 total minutes weekly through September 15, 2021. Fremont asserts that the program it offered to Student, called ACT, was an all-inclusive program that included embedded behavioral support services, in contrast to the one-to-one behavior support offered by Cupertino. Parent did not consent to the Fremont IEP offer.

Student began school at Fremont in August 2021. Fremont held a thirty-day IEP team meeting to review Student's progress. Parent continued to decline to sign Fremont's IEP offer. Student now seeks stay put based on the February 25, 2021 IEP from Cupertino, and specifically the one-to-one aide support, which Student contends was Student's last signed and implemented IEP.

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." 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).) For purposes of stay put, the current educational placement is typically the last agreed upon and implemented IEP placement before the dispute arose. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

When a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, considering the changed circumstances. (*R.F.*

Frankel v. Delano Union School District, (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing*, *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

Under both Federal and California law, when a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program of placement and services that are comparable to those offered in the last agreed IEP for a period not to exceed 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).)

However, neither the IDEA nor California special education statutes specifically address the obligation of a transferee school district regarding stay put when a student transfers to a new school district between school years, which is the case here. Nevertheless, despite the specific clarification by federal and state law relating to transfers *during* the school year, the transferee school district remains obligated under Title 20 United States Code section 1415(j) to provide a comparable educational placement, at all times, to a transferring special education student, in other words “stay put,” unless the parties agree otherwise.

Pending the outcome of the due process proceedings, Student is entitled to stay put. Fremont must provide Student a FAPE by delivering a comparable placement, services and supports to those provided in the February 25, 2021 Cupertino IEP. That would necessarily include behavior intervention services by a behavior specialist for 1690 total minutes, as provided on page 18 of 24 of Student’s February 25, 2021 IEP.

Student's motion for stay put is granted.

IT IS SO ORDERED.

Adrienne L. Krikorian

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Administrative Law Judge

Office of Administrative Hearings