

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021100021

ORDER GRANTING MOTION FOR STAY PUT

OCTOBER 05, 2021

On September 28, 2021, Student filed a motion for stay put. On October 1, 2021, Sacramento City Unified School District filed an opposition.

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).)

A school closure for budgetary reasons requires a "comparable program" in another location for stay put. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Bd. of Ed.* (2d Cir. 1980) 629 F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805.) "Hawaii's teacher furloughs and concurrent shut down of public schools is not a change in the educational placement of disabled children." *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116

DISCUSSION

There is no dispute that Student's last consented to and implemented IEP is dated May 10, 2021. At the May 10, 2021 IEP team meeting Student's IEP was updated to reflect his new address in the Caleb Greenwood International Baccalaureate World School boundary area. Student's resident school was not updated to reflect Caleb Greenwood but still reflected Hubert Bancroft Elementary School.

Student began the 2021-2022 school year in a general education class at Caleb Greenwood on September 2, 2021. On September 21, 2021, Sacramento City Unified notified Parent that Student's class was overenrolled and Student was to be moved to Hubert Bancroft as of September 23, 2021. Student filed a motion for stay put to

maintain his placement at Caleb Greenwood during the pendency of the due process proceeding.

Sacramento City Unified filed an opposition to Student's motion alleging Student's IEP does not specify Caleb Greenwood as Student's educational placement. Sacramento City Unified also alleges that due to over-enrollment Student cannot remain at Caleb Greenwood, however, his IEP can be fully implemented at Hubert Bancroft. Sacramento City Unified did not provide a declaration that Student's school of residence remained Hubert Bancroft even after Student moved closer to Caleb-Greenwood School before the May 10, 2021 IEP team meeting, especially considering that this IEP did not provide special education transportation services.

Student's May 10, 2021 IEP offers Student 30 minutes monthly of specialized academic instruction in a general education classroom, 900 minutes yearly of language and speech services, 1,350 minutes yearly of occupational therapy, and 1,800 minutes yearly of behavior intervention services. Student's May 10, 2021 IEP identifies the location of his services as a regular classroom in a public day school except for his language and speech services that are to be delivered in a separate classroom in a public integrated facility. Student's IEP does not identify Caleb Greenwood as the location where Student is to receive his special education services, nor does it identify any particular school necessary for Student to receive special education services.

Student argues he has already made friends at Caleb Greenwood, he is connected to his teacher and his aide, and he is looking forward to the talent show and Spanish class. Student argues these factors create a unique combination of facilities, personnel, location, and equipment necessary to provide the instructional services he needs. Additionally, Student argues that as a result of his disability transitions are difficult and changing schools after he already started school would be detrimental.

Sacramento City Unified argues that the law makes clear that a school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student.

Here, Student is requesting that the status quo include the school he began the school year at, not a new program Parent prefers. While it may be true that Student's IEP could be implemented at either Hubert Bancroft or Caleb Greenwood, Student began the 2021-2022 school year at Caleb Greenwood, not Hubert Bancroft. Caleb Greenwood remains open as a school site. This is not a situation where a school closed and is no longer available, nor is it a situation where Student is matriculating from one grade to another. Sacramento City Schools overenrolled Caleb Greenwood and tried to remedy the situation by moving Student after the school year began. Because Student began the year at Caleb Greenwood, and Caleb Greenwood remains open, Student is entitled to remain at Caleb Greenwood during the pendency of the due process proceeding. Student's motion for stay put is granted.

ORDER

Student's motion for stay put is granted. Student is entitled to remain at Caleb Greenwood International Baccalaureate World School during the pendency of the due process proceeding as his last agreed upon and implemented education program.

Linda Johnson

Linda Johnson

Administrative Law Judge

Office of Administrative Hearings