

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021100652

ORDER GRANTING MOTION FOR STAY PUT

NOVEMBER 12, 2021

On October 22, 2021, Student filed a request for due process hearing, naming Temecula. On that same day he filed a motion for stay put and filed an addendum to the motion on October 28, 2021.

On October 28, 2021, the Office of Administrative Hearings, called OAH, requested the filing of additional information, and on November 2, 2021, Student filed an individualized education program, called an IEP, dated January 14, 2021. Student also filed a declaration by his father that the January 14, 2021 IEP constituted Student's last agreed-upon and implemented placement.

On November 5, 2021, Temecula Valley filed an opposition, arguing primarily that Student was no longer a resident of the District.

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 IEP placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

However, if a student’s placement in a program was intended only to be a temporary placement, such placement does not become a student’s “stay put” placement. (*Verhoeven v. Brunswick School Committee* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard by Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

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).)

DISCUSSION

- From the parties’ pleadings and declarations, the following facts appear to be undisputed: Student is a nine-year-old boy who has Down Syndrome. He is eligible for special education and related services in the primary category of intellectual disability and the secondary category of speech or language impairment.
- Student normally lives with his Parents and siblings at an address in Temecula, California, that is within the geographical boundaries of the Temecula Valley Unified School District. Recently, however, the inside of the family home was

flooded. On or about August 1, 2021, Parents and Student moved temporarily to a hotel in Oceanside, California to await repairs to their home. Those repairs are ongoing and have been repeatedly delayed by insurance and supply line difficulties. Student's older siblings are staying in the home while it is repaired, and Father goes there during the day to work remotely. Parents believe that the home in its current condition is unsafe for Student. The family receives mail at the Temecula address and Parents are registered to vote with that address. The family hopes that it will be able to return to the family home in late November.

- On October 25, 2021, Temecula Valley disenrolled Student on the asserted ground that he was no longer a resident of the District. It encouraged Parents to enroll him in a different district and invited Parents to re-enroll Student in Temecula Valley when Student and Parents returned to the family home. Student then filed this motion for stay put.
- The agreed-upon facts show that Temecula Valley was incorrect in deciding that Student had changed his residence. Residency for the purposes of the Individuals With Disabilities in Education Act is determined by state law. (*Union School District v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525, fn. 1. In California the residency of a minor child is generally the residency of the parents. (Gov. Code, § 244, subd. (d); *Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57.) Education Code section 48200 imposes on the district of residence the obligation to provide an eligible student special education and related services, and imposes on parents the duty to ensure that the student attends school. (*B.H. v. Manhattan Unified Sch. Dist.* (2019) 35 Cal.App.5th 563, 571.)
- California law defines residency as "the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or

she returns in seasons of repose.” (Gov. Code, § 244, subd. (a).) There can be only one residence, and a residence is not lost until another is gained. (*Id.*, subds. (b), (c).) A change of residence requires a union of act and intent. (*Id.*, subd. (f).) Temecula Valley does not analyze or even mention these basic rules of residency.

- Student’s family has been “called elsewhere” (Gov. Code, § 244, subd. (a)) for a temporary purpose but plans to return to the family home as soon as possible. Some family members still live or work there. Parents, and therefore Student, have not gained a new residence, and do not display any intent to do so. Temecula Valley recognizes that their stay in the Oceanside hotel is only temporary. The home in Temecula therefore remains Student’s residence and Temecula Valley is obliged to serve him under Education Code § 48200.
- Student’s program is governed by an IEP, dated January 14, 2021. In response to an OAH request, Student filed that document along with a declaration from Father that it is the last agreed-upon and implemented IEP. Temecula Valley argues that since the copy of the IEP filed by Student is unsigned, Student has not established that it is the last agreed-upon and implemented program. That argument might matter if Temecula Valley asserted that a different program governs, but it does not. Temecula Valley does not identify any other IEP that might be the last agreed-upon and implemented IEP, and does not state what, in Temecula Valley’s view, Student’s placement actually is. It even asserts that “On or about January 14, 2021, Student’s IEP team convened to develop his annual review and to develop his IEP going forward.” Notably, Temecula Valley does not argue that the January 14, 2021 IEP was not signed, only that the copy filed by Parents was not signed. In the entire absence of any evidence or argument to

the contrary, Father's sworn statement that the January 14, 2021 IEP is the last agreed-upon and implemented program is sufficient to establish that fact.

- Temecula Valley argues that the stay put rule does not apply because Student has not regularly been attending school. The record shows that transporting Student to school every day from the Oceanside hotel is difficult. In addition, the parties have only recently resolved a dispute over Student's ability to tolerate a mask all day at school. On October 19, 2021, Temecula Valley granted him an exemption from that requirement.
- More fundamentally, Temecula Valley cites no authority or reasoning in support of its claim that the stay put rule might not apply if the student has poor attendance. Temecula Valley does not identify any connection between the stay put rule and school attendance. No law supports disregard of the stay put rule to enforce attendance. Temecula Valley has begun proceedings before the Student Attendance Review Board, the proper forum for such disputes. The command of subsection (j) of section 1415 of the United States Code that the child shall remain in the then-current educational placement during litigation is not qualified by any exception for poor attendance. There is no reason to believe that Congress intended the stay put rule to be disregarded for the purpose of enforcing attendance laws.
- Temecula Valley also argues briefly that it has not changed Student's placement. The reasoning behind this claim is not apparent. Although Temecula Valley argues that it has not "proposed any change of placement," its letter to Parents disenrolling Student encourages them to enroll him in a different district.
- In California a placement is defined as the unique combination of facilities, personnel, location or equipment necessary to provide special education and services to an eligible student. (Cal. Code Regs., tit. 5, § 3042, subd. (a).)

Temecula Valley's disenrollment of Student deprived him of all the facilities, personnel, location, and equipment involved of his placement, and was therefore a change of placement. And the term of the disenrollment was indefinite. By comparison, a suspension of more than ten school days is treated by the IDEA as a change of placement that gives rise to several procedural rights. (20 U.S.C. § 1415(k)(1)(B), (C); 34 C.F.R. § 300.530(b)(1)(2006).) Temecula Valley's indefinite disenrollment of Student is a much more serious rupture of their relationship than a temporary suspension.

ORDER

1. Student's motion for a stay put order is granted.
2. Temecula Valley shall promptly re-enroll Student and deliver his program, to the extent practicable, according to the IEP of January 14, 2021.

Charles Marson

Charles Marson

Administrative Law Judge

Office of Administrative Hearings