BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

# IN THE MATTER OF:

# PARENTS ON BEHALF OF STUDENT,

v.

# ROCKLIN UNIFIED SCHOOL DISTRICT.

# OAH CASE NUMBER 2024060302

# ORDER DENYING MOTION FOR STAY PUT

JUNE 27, 2024

On June 10, 2024, Student filed a motion for stay put. On June 13, 2024, Rocklin filed an opposition to the motion. The parties agreed that the individualized education program, called IEP, dated December 18, 2023, constitutes Student's last agreed-upon and implemented program. However, neither party provided a copy of that document.

On June 14, 2024, OAH ordered Parent to file an accurate and complete copy of the governing IEP. Parent complied with that Order on June 19, 2024, and Rocklin did not object to the copy of the IEP that Parent filed.

## 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).)

## DISCUSSION

Student is four years old and will begin transitional kindergarten this coming school year. She is eligible for special education and related services under the primary category of other health impairment and the secondary category of vision impairment. Student is medically fragile and fed, in part, by a G-tube. She requires the continual presence of a nurse.

Parent argues that for at least a year, Student has attended an after-school day care program at My Friends Pediatric Day Center, a program for medically fragile children such as Student. Parent asserts that for more than a year Rocklin has provided transportation from school to My Friends, that the transportation is critical to Student's ability to learn, and that Rocklin has ceased providing it on June 6, 2024. Parent asserts

that after-school transportation to My Friends is part of her stay put placement and should be restored.

Rocklin agrees that the December 18, 2023, IEP is the governing document and that it has ceased transporting Student to My Friends after school. Rocklin asserts that such transportation is not in Student's IEP, but was simply an informal arrangement between Rocklin and Parent outside of the IEP process. Now that Student will attend a new school in the fall, Rocklin no longer wishes to transport her after school to New Friends. Rocklin asserts that the informal arrangement was not part of Student's educational placement, and its continuance is not required by the doctrine of stay put. Rocklin has offered Student an IEP containing transportation to and from school, but not to or from My Friends.

Student's moving papers refer to the IEP as "incorporating [Student's] transportation with nurse accompaniment," but do not identify any particular provision of the IEP that requires after-school transportation to My Friends or any other day care facility.

Examination of the December 18, 2024, IEP shows that it does require transportation, but not to after-school day care. The transportation section of the IEP form contains boxes to be checked for various aspects of transportation, and on the December 18, 2023 IEP, boxes are checked for alternate access, car seat, curb-to-curb, medical protocol, nurse/aide on bus, and transports medication. There is no reference to transportation after school to day care generally or My Friends specifically. Rocklin is correct that the governing IEP does not require it to transport Student to My Friends after school.

As noted above, 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.) The placement does not include services or programs a student may have been receiving if they are not required by the student's IEP.

In *Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, a student argued that a tutoring program he had been receiving was part of his stay put placement even though it was not required by his IEP. The Ninth Circuit disagreed:

> Because Gregory's tutoring program was not special education pursuant to an IEP, we need not decide whether the District's actions . . . constituted a change of placement. The "status quo" provisions of the Act apply only to special education received pursuant to an IEP.

(*Gregory K. v. Longview Sch. Dist., supra*, 811 F.2d at pp.1313-1314, citing *Zvi D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906; see also *John M. v. Board of Educ. of Evanston Tp. High Sch. Dist.* 202 (7th Cir. 2007) 502 F.3d 708, 716 ["Even if a school has provided a particular service in the past, it need not be provided in a stay-put situation if it was not within the governing IEP [citations omitted]"; *Cordrey v. Euckert* (6th Cir. 1990) 917 F.2d 1460, 1468 ["The stay-put provision applies only to services included in the child's IEP."]

Since the transportation Student seeks is not part of her last agreed-upon educational placement, her motion for stay put is DENIED.

IT IS SO ORDERED.

*Charles Marson*

Charles Marson
Administrative Law Judge
Office of Administrative Hearings