BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015100496 ORDER DENYING MOTION FOR STAY PUT

On October 8, 2015, Student filed a motion for stay put concurrently with a Request for Due Process (complaint). On October 13, 2015, District filed an opposition. The motion is denied for the reasons discussed below.

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)[1]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program, which has been implemented 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.)

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 IEP 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 Sch. Dist*. (9th Cir. 2003) 337 F.3d 1115, 1134.)

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

California Education Code section 56325, subdivision (a)(1), similarly addresses the situation in which a child transfers from one school district to another school district which is part of a different Special Education Local Plan Area. Section 56325, subdivision (a)(1), mirrors title 20 United States Code section 1414(d)(2)(C)(i)(1), with the additional provision that, for a student who transfers into a district not operating under the same SELPA, the Local Education Agency shall provide the interim program "in consultation with the parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved IEP or shall develop, adopt, and implement a new IEP that is consistent with federal and state law."

Title 34 Code of Federal Regulations, part 300.323(e) (2006), consistent with title 20 United States Code section 1414(d)(2)(C), expressly provides that the duty to implement a "comparable" IEP for a student who changes districts of residence is only triggered when the student transfers during the school year. In the comments to the Code of Federal Regulations, the United States Department of Education noted that some commentators requested that the regulations clarify the responsibilities of the new public education agency to implement the IEP of a child who moves during the summer. The United States Department of Education declined to change the regulations, reasoning that the applicable rule is that all school districts are required to have an IEP in place for each eligible child at the beginning of the school year, such that the new district could either adopt the prior IEP or develop a one. (71 Fed. Reg. 46682 (August 14, 2006).)

DISCUSSION AND ORDER

Student did not support his motion for stay put with a declaration under penalty of perjury authenticating facts asserted in argument. Student asserts that his family moved out of District's boundaries for a period of time for medical reasons. While in the temporary residence, Student had an IEP from Mid Alameda County SELPA that provided for Home Hospital services due to his medical issues. Student's attorney included an unauthenticated copy of an IEP dated November 14, 2014 from the SELPA as an exhibit to the motion. Student returned to his residence within the District's boundaries "in June 2015," and Parents contacted District on June 29, 2015 to begin the enrollment process, providing a copy of the November 14, 2014 IEP to a District staff member. Student contends that District has refused until the time of filing of the complaint to provide educational services and supports to Student. Student seeks stay put consistent with the November 14, 2014 IEP from Mid Alameda.

District's opposition included a declaration under penalty of perjury from a District staff member, and an authenticated copy of the November 14, 2014 IEP. District contends that it agreed to implement the November 14, 2014 IEP's Home Hospital services, providing Parents met District's requirements for doctor's instructions and completion of necessary paperwork. District asserts that Parents have not yet cooperated by complying with all of those requirements and for that reason District has not yet been able to implement the November 14, 2014 IEP.

Student's motion, which is void of any evidence supporting his claim to stay put, does not fit within the intent of the stay put provisions of the IDEA. The IDEA limits the duty of the transferee school district to comparably implement IEPs from the prior district to students who transferred during the school year. A summer transfer student is more properly treated like a student applying for initial admission to public school who is entitled to attend a public program with a new IEP, but is not entitled to "stay put" because at the time of the transfer, the receiving school district was not implementing an IEP as the student's local educational agency. (See 20 U.S.C. § 1415(j).) Instead, the remedy for a placement dispute for a summer transfer student is to seek a due process hearing to establish what a FAPE is in the transferee district.

Student has offered no evidence or legal authority establishing that, under either of the scenarios described above, he is entitled to stay put or that his November 14, 2014 IEP should form the basis for stay put. Accordingly, Student's motion is denied.

DATE: October 21, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings