BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. DELANO UNION ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2016100759 ORDER DENYING MOTION FOR STAY PUT

On October 26, 2016, Student filed a motion for stay put, which was supported by two declarations under penalty of perjury, a copy of Student's May 5, 2016 individualized education program from Torrance Unified School District, and authenticated correspondence. On October 31, 2016, Delano Union School District filed an opposition supported by declarations under penalty of perjury. On November 2, 2016, Student filed a reply in support of his stay put motion supported by a declaration under penalty of perjury. On November 2, 2016, OAH issued an order requiring additional information from both parties regarding the stay put motion. On November 4, 2016, both parties timely filed supplemental briefs and declarations.

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 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, subd. (a).)

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 School Dist.* (9th Cir. 2003) 337 F.3d

1115, 1134, 20 U.S.C. § 1414(d)(1)(B).) The Individuals with Disabilities Education Act and state law do not expressly provide that students who transfer school districts between academic years are entitled to a comparable placement. (See *Ibid.*)

In 2006, the United States Department of Education considered the responsibilities of a transferee school district to a child with special needs, in response to the 2006 revised version of the IDEA's enabling regulations . In doing so, the Department of Education declined to change title 34 Code of Federal Regulations section 300.323(e) by adding specific provisions relating to transfers between school years. In its Comments to the 2006 regulations, the Department of Education noted that, in the case of transfers between school years, the IDEA provided that the new school district was required to have an IEP in place for each eligible child at the beginning of the school year. However, the Comments did not specify that the new district was required to adopt the child's prior IEP, or model the new IEP based on the child's IEP from the prior school district. Similarly Congress did not change the regulations to require transferee districts to afford a child the right to stay put based on the prior district's IEP, when the transfer was between school years. (71 Fed.Reg. 46682 (2006).).

DISCUSSION

Student asserts that he attended Torrance Unified School District during the 2015-2016 school year. His last agreed upon and implemented IEP developed by Torrance was on May 5, 2016. For personal family reasons, Father wanted Student to live with extended family and to attend school for the 2016-2017 school year at Delano. The regular school year at Delano ended on June 1, 2016. The regular school year at Torrance ended on June 23, 2016. Father enrolled Student at Delano on June 17, 2016. Delano held two IEP meetings for Student in July and early August 2016. Father disagreed with Delano's offers of a free appropriate public education, and asserted his alleged right to "unilaterally place" Student. Student has not yet attended any Delano school; he is enrolled in and attending a Torrance school pending resolution of this dispute.

Student seeks stay put based on his claim that Delano's IEP's during the summer of 2016 failed to offer him a FAPE. Student claims Delano is required under the doctrine of stay put to implement the provisions of the May 5, 2016 IEP from Torrance, including specific behavior services that were provided by a non-public agency. Student argues that a child who is eligible for special education and who transfers school districts should be entitled to stay put, by preserving the status quo, regardless of when that child transfers districts. Student asserts that the statutory language providing for stay put does not justify depriving a child who transfers districts between school years of stay put protections. Student relies on *T.B. v. ex rel. Brenniese v. San Diego Unified School Dist.* (9th Cir. 2015) 785 F.3d 1067, 1095 (*T.B.*). However, *T.B.* is not factually on point with this case. *T.B.* involved an appeal of the terms of a stay put provision in a settlement agreement. The Ninth Circuit reviewed the lower court's findings as to whether the stay put terms were favorable to parents under those specific facts. It did not address the application of stay put for transfer students between school years. Therefore, Student's reliance on *T.B.* is not persuasive.

Student cites to no persuasive authority supporting a finding that, where the IDEA and its enabling regulations are silent as to stay put for district transfers between school years, they should be interpreted to include the time period between school years in Student's right to stay put. Student fails to distinguish a school district's obligation to offer a transfer student an IEP if the transfer is between school years, and the right to stay put under title 34 Code of Federal Regulations section 300.323(e) under those same circumstances.

On the other hand, District's position is consistent with the Federal Department of Education's position. District contends where the statute is silent, District is obligated under the IDEA to timely provide an appropriate IEP to a transfer student before the beginning of the school year. The Department of Education made no changes to the 2006 Regulations to address the time period between school years for transfer students. District argues it complied with its duty to offer Student an IEP before the school year; it is not obligated to provide a 30-day interim IEP similar to Torrance's May 2016 IEP; and it is not obligated to adopt Student's IEP from Torrance as stay put.

Under these facts, Delano's position is more persuasive. Delano's school year ended on June 1, 2016. On June 17, 2016, Father enrolled Student at Delano, after Delano's school year had ended. Delano held IEP meetings for Student before the school year started, offered an IEP, Father disagreed with the offer, and this dispute resulted. Because, in this case, Student transferred to Delano after the end of its regular school year, Student is not entitled to stay put based on the May 2016 IEP from Torrance.

This Order does not address the merits of Student's case. The facts relied upon in this Order are not binding on the hearing officer. The issues and defenses raised on the merits of Student's case require findings by the hearing officer after both parties have had an opportunity to present evidence.

Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: November 10, 2016

DocuSigned by:
Adrienne L. Krikorian
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings