BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANAHEIM UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2015100832 ORDER DENYING MOTION FOR STAY PUT

On October 19, 2015, Student filed a motion for stay put. On October 23, 2015, Anaheim Union High School District filed an opposition. On October 27, 2015, Student filed a reply.

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.)

When a special education student transfers to a new school district within 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); 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.) 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

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

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 alleges in her due process hearing request (complaint) that she is eligible for special education, and pursuant to a written agreement with her elementary school district that settled an unrelated matter, attended a nonpublic school for the 2013-2014 and 2014-2015 school years. The elementary school district held an IEP team meeting in May 2015 pursuant to the agreement, but Parents did not consent to the IEP developed at that meeting.

When Student transitioned to the seventh grade for the 2015-2016 school year, her new school district was Anaheim Union High School District. Anaheim assessed Student and offered a public school program for the 2015-2016 school year in an IEP dated August 6, 2015. Parents wanted Student to remain at the nonpublic school, and did not consent to Anaheim's IEP offer.

Student moves for an order that the non public school is Student's "stay put" placement. Student argues that Anaheim should be ordered to "fund" Student's placement at the nonpublic school on the grounds the nonpublic school is Student's last "educational program" and that Parents and the elementary school district agreed that the nonpublic school would be stay put in the event of a disagreement over the elementary school district's May 2015 IEP offer. Student contends the law defining a student's current educational program as the placement called for in the last agreed upon and implemented IEP is "hypertechnical," and that OAH can look anywhere to determine a student's current educational program. Student also asserts that the language of the law permits a parent and school district to otherwise agree to a stay put placement pending a dispute. The sworn declaration of Student's counsel attaches a copy of the disputed Anaheim IEP of August 6, 2015, and a copy of the settlement agreement between Parents and the elementary school district.

The IDEA limits the duty of a transferee school district to comparably implement IEP's from the prior district to those students who transferred during the school year. A summer transfer student is more properly treated as a student applying for initial admission to public school, and who is entitled to attend a public program with a new IEP. A summer transfer student 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.

Here, Student transferred over the summer into Anaheim, and is not entitled to implementation of an IEP from the elementary school district as stay put. Even if the principles of stay put applied in this situation, Student has failed to offer credible evidence of

her last agreed upon and implemented IEP. A settlement agreement is not an IEP. Although parties may contractually define the stay put placement pending a dispute *between themselves*, Student cites no authority for parents and one school district to bind a second school district to implement a program that is not embodied in an IEP. Student cites no authority for holding Anaheim responsible for implementing the terms of a settlement agreement to which it was not a party, and which agreement constituted the compromise of a dispute between Parents and an elementary school district concerning the 2013-2014 and 2014-2015 school years, when Anaheim had no responsibility for Student's educational program.

Accordingly, the motion for stay put is denied.

IT IS SO ORDERED.

DATE: October 29, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings