BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN JUAN UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018020299 ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR STAY PUT

On November 6, 2017, Student enrolled in the San Juan Unified School District in Sacramento County, having recently moved from the Clear Creek Elementary School District with his mother. Clear Creek is part of the Nevada County Special Education Local Plan Area (SELPA). San Juan Unified School District administers its own SELPA.

On February 6, 2018, Student filed a request for due process hearing challenging whether a November 28, 2017 interim individualized education program (IEP) offered by San Juan, provides him with a free appropriate public education (FAPE). Student also filed a motion for stay put, asserting that Student should be allowed to attend Sierra Foothill Academy, a non-public school, during the pendency of this dispute; and that all service levels designated in the June 6, 2017 IEP (the last agreed and implemented IEP) should continue. Student asserts that those services include: One hour of individual speech and language therapy per week, 30 minutes of individual occupational therapy per week and a one-to-one aide. The June 6, 2017 IEP also provided for transportation and continuation of Student's behavior intervention plan.

On February 12, 2018, District filed an opposition to the stay put motion on the grounds that Sierra Foothill Academy was not within San Juan's boundaries; San Juan did not have a current contract with Sierra Foothill Academy; and that Student's appropriate stay put placement is either a special day class or non-public school within San Juan's boundaries.

On February 13, 2018, the undersigned issued an order directing Student to provide additional evidence of the school he continuously attended from the time he asserted an implemented IEP resulted in his enrollment, to the date the request for due process was filed. The evidence was ordered to be filed no later than February 20, 2017. The order set a deadline for San Juan to file any desired response to Student's additional evidence of February 23, 2018. The filings were timely received.

On February 15, 2018, Student submitted evidence that the last agreed and implemented IEP provided for placement at Sierra Foothills Academy, a local non-public school. Evidence was also submitted that Student had continuously attended Sierra Foothill Academy from April of 2016 through the present. On February 22, 2018, San Juan submitted additional argument in opposition to the motion.

Student points out that Sierra Foothill Academy is identified by name in the on the June 6, 2017 IEP, specifically, on the "Offer of FAPE –Educational Setting" page.[1] Student argues that stay put is intended to maintain the status quo during the pendency of the lawsuit and, therefore, he should be allowed to continue attending Sierra Foothills Academy until the dispute identified in the request for due process is resolved. Student further expressed concern that the interim IEP that is the subject of the due process hearing request, decreased his speech and language therapy and removed his one-to-one aide and transportation services.

San Juan asserts that the last implemented IEP offer described Student's placement as "a non-public school (NPS) with speech/language services and OT services as the least restrictive environment…" San Juan explains that a non-public school was chosen by Student's prior district, Clear Creek Elementary School District, because it is a single school district with a very small (144 students) population. As a result, Clear Creek was unable to serve Student and offered placement at Sierra Foothills Academy. San Juan asserts that stay put is not Sierra Foothills Academy, as Sierra Foothills is not a program within the San Juan district; San Juan is not within the same SELPA as Clear Creek; and San Juan has district programs they can offer which will provide Student with comparable special education and related services, either in a non-public school or in a special day class. San Juan specifically identified Odyssey Learning Center in Orangevale, California, asserting it is a comparable to Sierra Foothill Academy for the purposes of stay put. San Juan has acknowledged its obligation to address "all needs identified" in the last implemented IEP pending resolution of the dispute. It is unclear from the District's opposition papers whether it is acknowledging an obligation to provide services at previously agreed levels pending resolution of the dispute.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her "then-current educational placement", unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)[2]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment

[1] The pages of the IEP submitted by Student are not numbered.

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

necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

The Ninth Circuit has defined "then-current educational placement" as "the educational setting in which the student is actually enrolled at the time the parents request a due process hearing to challenge a proposed change to the child's educational placement. (*N.E. by and through C.E. and P.E. v. Seattle School District* (9th Cir. 2016) 842 F. 3d 1093, 1096.) Typically, that has been acknowledged to be the child's last implemented IEP. (*L.M. ex rel. Sam M. v. Capistrano Unified School District* (9th Cir. 2009) 556 F. 3d 900, 902.) However, when a child transfers to and enrolls in a new school, in a new local educational agency, within the state, during the school year, the new educational agency must provide a FAPE to the child. The educational program offered by the new district must include services comparable to those described in the child's IEP from the prior educational agency until the new educational agency either, adopts the IEP from the prior educational agency on behalf of the child; or develops, adopts and implements a new IEP. (*R.F. v, Delano Union School District* (2016) 224 F.Supp.3d 979, 985; 20 U.S.C 1414 (d)(2)(C)(i)(1); 34 C.F.R. 300.323(e); Ed. Code §56325, subd. (a)(1).)

DISCUSSION

Student enrolled in the San Juan Unified School District on November 6, 2017, but continued to attend Sierra Foothills Academy pending creation of a new IEP by San Juan. On November 28, 2017, San Juan offered a new IEP which Student asserts does not offer FAPE. A request for due process to resolve that question, among others, has been filed. The determination of the stay put motion is separate from the determination of the legal adequacy of the November 28, 2017 IEP and other issues raised by the due process request.

Statutory interpretation requires that words be accorded their plain meaning unless doing so leads to an absurd result the legislature did not intend. (*Los Angeles Unified School District v. Garcia*, (9th Cir. 2014) 741 F. 3d 922, 929.) In this case, both state and federal statutes concur: When a child moves within the state but to a new district that does not share an educational agency with Student's prior district, and that transfer occurs during the school year, the new school district is not required to replicate the exact circumstances of Student's last IEP. Instead, the new district is required only to provide comparable services pending implementation of a new IEP or resolution of differences that arise regarding the establishment of a new IEP. The Ninth Circuit has acknowledged, "Although the stay-put provision is meant to preserve the status quo, we recognize that when a student transfers educational jurisdictions, the status quo no longer exists." (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133, superseded by statute on other grounds, 20 U.S.C. §1414(d)(1)(B).)

Student is entitled to a placement location that is comparable to that provided by his prior educational agency, which in this case is a non-public school.[3] Student is also entitled to stay put as to the levels of related services described in the June 6, 2017 IEP. Student's last IEP provided for one hour of individual speech and language therapy per week, 30 minutes of individual occupational therapy per week and a one-to-one aide. Student was also entitled to transportation and continuation of Student's behavior intervention plan. San Juan is obligated to continue services at the levels provided for in the June 6, 2017 IEP pending resolution of the underlying dispute.

ORDER

1. The motion for stay put is GRANTED IN PART and DENIED IN PART.

2. Student's request to continue attendance at Sierra Foothills Academy is DENIED. Sierra Foothills Academy is not Stay Put. San Juan must provide a comparable placement location to that described in Student's last agreed and implemented IEP, which in this case is a non-public school, pending resolution of the dispute stated in Student's request for due process.

3. Student's motion for stay put to continue his related services at levels contained within his June 6, 2017, IEP is GRANTED. Student must be provided with one hour per week of individual speech and language therapy, thirty minutes per week of individual occupational therapy, a one-to-one aide, transportation services and the continuation of Student's behavior intervention plan pending resolution of the dispute stated in Student's request for due process.

IT IS SO ORDERED.

DATE: February 23, 2018

DocuSigned by:
Penelope S. Pahl
B3DF836E5DA94F2...

PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings

[3] San Juan asserted that it intends to offer Odyssey Learning Center as a comparable non-public school placement for Student. Determining whether or not Odyssey Learning Center is comparable to Sierra Foothills Academy was not raised in the motion for stay put. Accordingly, no finding is made herein regarding that contention.