BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018100405 ORDER PARTIALLY GRANTING MOTION FOR STAY PUT

On October 5, 2018, Student filed a request for due process with the Office of Administrative Hearings naming Newport-Mesa Unified School District. On October 8, 2018, Student filed a motion for stay put. On October 11, 2018, District filed an opposition on the grounds that it was not responsible for funding Student's placement.

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, 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).) If a Student is placed in a residential nonpublic school prior to transferring to a district in a different special education local plan area then

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

the placing district is responsible for funding the placement for the remainder of the school year, including the extended school year. (Ed. Code, § 56325, subd. (c).)

These rights of a transferring student only apply in the case of a transfer within the same academic year that the student was in the previous district. There are no federal or state statutory provisions addressing the situation where a student transfers between school years, such as during summer vacation. In the official comments to the 2006 Federal Regulations, the United States Department of Education addressed whether it needed to clarify the Regulations regarding the responsibilities of a new school district for a child with a disability who transferred during summer. The Department of Education stated that the IDEA, (20 U.S.C. § 1414(d)(2)(a)), is clear that each school district must have an IEP in place for a child at the beginning of the school year. Therefore, the new district must have a means for ensuring that an IEP is in effect at the beginning of the school year. (71 Fed. Reg. 46682 (August 14, 2006).)

DISCUSSION

Student attended Magnolia Science Academy for the 2017-2018 school year. In February 2018 Student was placed at the Help Group. Pursuant to a settlement agreement executed on June 20, 2018, Student's October 17, 2017 IEP was amended to reflect placement at a residential nonpublic school. Parent consented to the IEP amendment on July 20, 2018. Student did not reenroll in Magnolia Science Academy for the 2018-2019 school year. Instead, on August 23, 2018, Parent began the enrollment process for Student at Carona Del Mar High School in Newport-Mesa. Although the copy of the IEP Parent submitted to Carona Del Mar on August 23, 2018, was unsigned, Parent provided the signed copy of the IEP on September 4, 2018. The first day of school for the 2018-2019 school year for Newport-Mesa was September 4, 2018.

On September 25, 2018, Newport-Mesa created an IEP interim placement request listing Student's school of attendance as a non public school. Newport-Mesa listed Student's program and services as residential treatment services, educationally related mental health services, language and speech services, and special day class non public. Although Newport-Mesa did not specify the specific school location for the residential treatment services or nonpublic school, it did explain in the comments that Student had been placed at a residential nonpublic school, the Help Group – Bridgeport Project Six. Newport-Mesa further explained in the comments that the El Dorado County Charter Special Education Local Plan Area would remain the funding source for the 2018-2019 school year per Ed. Code, § 56325, subd. (c).

Newport Mesa's argument that Student transferred during the 2018-2019 school year is not persuasive. Student attended Magnolia Science Academy during the 2017-2018 school year and did not reenroll for the 2018-2019 school year. Instead, Student enrolled in Newport-Mesa for the 2018-2019 school year. Newport-Mesa argues that because Student attended the Help Group after Magnolia Science Academy's 2018-2019 school year

commenced on August 14, 2018, and that Magnolia Science Academy maintained possession of Student's educational records until at least August 31, 2018, Student therefore transferred during the 2018-2019 school year. However, Newport-Mesa did not provide any evidence that Student was actually enrolled in Magnolia Science Academy during the 2018-2019 school year. Student attended a residential nonpublic school, by nature that is year round. Simply because Magnolia Science Academy's 2018-2019 school year commenced before Newport-Mesa's 2018-2019 school year is not evidence that Student attended Magnolia Science Academy during the 2018-2019 school year. For purposes of stay put, Student did not transfer during the 2018-2019 academic year therefore Ed. Code, § 56325, subd. (c), does not apply.

Student did not provide any authority that Newport-Mesa is obligated to implement an IEP that it did not develop when Student transferred from a different special education local plan area over the summer. Therefore, Student's motion for stay put as to the October 17, 2017 IEP that was subsequently amended then consented to on July 20, 2018, is denied.

However, Student is entitled to FAPE during the pendency of this due process hearing. Newport-Mesa created an IEP interim placement request on September 25, 2018, listing Student's school of attendance as a non public school. Newport-Mesa listed Student's program and services as residential treatment services, educationally related mental health services, language and speech services, and special day class non public. Student's Parent consented to the Interim IEP on September 27, 2018, although she disagreed with Newport-Mesa's contention that it was not responsible for placement. Newport-Mesa did not provide any evidence that it made any other offer of FAPE for Student. Instead, Newport-Mesa relied on its argument that Student transferred during the 2018-2019 school year therefore it was not responsible for funding Student's placement at a residential nonpublic school. For purposes of stay put, Newport-Mesa's IEP interim placement request dated September 25, 2018, constitutes its offer of FAPE for the 2018-2019 school year therefore, it is Student's stay put during the pendency of this hearing.

ORDER

Student's motion for stay put is partially granted. Newport-Mesa is to implement and fund its offer of FAPE in its IEP interim placement request dated September 25, 2018.

DATE: October 24, 2018

DocuSigned by:
Linda Johnson
5092A92341544B9...

LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings