BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ALHAMBRA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013070314 ORDER DENYING MOTION FOR STAY PUT

On July 18, 2013, Student filed a Motion for Stay Put. On July 22, 2013, the parties stipulated to extend the timelines for filing responses to the Motion for Stay Put until close of business on July 26, 2013. District filed its opposition to the Motion for Stay Put and Student filed his reply to District's opposition on July 26, 2013.

APPLICABLE LAW

Under federal and state special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. 300.518 (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School District* (5th Cir. 1983) 695 F.2d 949, 953; *Zvi D. v. Gordon Ambach* (2d Cir. 1982) 694 F.2d 904.)

For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), 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, "special educational placement means 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.)

School districts are required to have an IEP in place for each eligible child "at the beginning of each school year." (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 56344, subd. (c).) Prior to July 1, 2005, the IDEA at Title 20 United States Code section 1414(d)(2) contained the above requirement but did not expressly address the duty of a school district to implement the IEP of a student who transferred into a district because of a change of residence. Absent an express provision of the IDEA on this subject, some courts adopted a rule that a district met its stay put obligation to a transfer student when it temporarily

provided an approximate program to a transfer student if the prior district's program could not be replicated exactly. (See *Ms. S ex rel. G v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134.) Notably, in *Vashon Island,* the Ninth Circuit Court of Appeals stated that the stay put obligation "is not absolute" when an eligible child changes districts because even though stay put is intended to preserve the status quo, "we recognize that when a student transfers educational jurisdictions, the status quo no longer exists." (*Ibid.*)

Effective July 1, 2005, the IDEA was revised to only require that a new district of residence provide a "comparable" program until an IEP is *developed if the change of residence occurred during the school year*. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 20 U.S.C. § 1415(j); Ed. Code, § 56325, subd. (a)(1) [same, with addition of 30 day time limitation to either adopt the prior district's IEP or implement a new one consistent with state and federal law].)

Title 34 Code of Federal Regulations, part 300.323(e), went into effect on October 13, 2006, and, 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 rule requiring all school districts to have an IEP in place for each eligible child at the beginning of the school year applied instead, such that the new district could either adopt the prior IEP or develop a one. (71 Fed. Reg. 46682 (August 14, 2006).)

The Government Code and the Education Code provide for coordination between courts and SELPAs, and division of financial responsibility, when courts place disabled children in residential facilities. (Gov. Code, §§ 7579-7582; Ed. Code, §§ 56155-56166.5.) When courts place disabled children in residential facilities, the local educational agency (LEA) is not financially responsible for the "residential costs and the cost of noneducation services" when it is not the placing agency. (Gov. Code, §§ 7579, subd. (b), 7581; Ed. Code, § 56159.)

DISCUSSION

The Motion for Stay Put clearly states that Student seeks stay put, not from the Los Angeles County Office of Education (LACOE)'s June 5, 2012 IEP, but from District's September 6, 2012 IEP. District contends that it should not be the financially responsible entity because Student's placement at the Devereux Florida Intensive Residential Treatment Center (RTC) is a court ordered placement, Student's juvenile delinquency matter has not been dismissed and District had always disagreed with the appropriateness of Student's placement at the RTC. Therefore, District maintains that financial responsibility for Student's services and placement after July 31, 2013 should remain either with LACOE, as

the placing agency, or with the SELPA where the RTC is located—neither of which is a party to this case. As discussed below, the Motion for Stay Put is denied.

LACOE was the responsible LEA for Student when Student entered juvenile hall. District is and, at relevant times, was mother's district of residence and was Student's educational district before he entered juvenile hall. By its July 26, 2012 order (Commitment Order), the Superior Court released Student from juvenile detention for placement at the RTC with related supporting services pursuant to LACOE's June 5, 2012 IEP offer. LACOE agreed to pay for Student's RTC placement and related supporting services until July 31, 2013. On September 6, 2012 District held an IEP for a 30-day review of RTC placement, wherein District disagreed with LACOE's placement of Student at the RTC and specifically stated "[District] continues to believe that this is not an offer of a FAPE for [Student]." In its September 6, 2012 IEP, District offered nonpublic day school (NPS) with counseling and guidance, which was never implemented, and Student stayed at the RTC from date of commitment to the present. The fact that District's September 6, 2012 IEP document identified "Devereux (Florida)" as Student's school of attendance does not amount to an offer of the RTC for purposes of stay put. Nowhere in the September 6, 2012 IEP did District agreed to offer, or offered, RTC placement or the related supporting services which is the substance of Student's stay put request. Similarly, because LACOE had paid for the placement, District could not be said to have been implementing the placement. Since the last agreed upon *and* implemented IEP is the June 5, 2012 LACOE IEP, no legal basis exists upon which to establish stay put either as to the District, or with respect to District's September 6, 2012 unimplemented IEP.

Even if one accepts Student's argument that LACOE ceased being Student's LEA by July 31, 2012, upon Student's placement at the RTC, and Student was considered transferred back to the District as the responsible LEA, the principles of stay put do not apply to District. The IDEA, as amended in 2005 by Congress, limited the duty of the transferee school district to comparably implement IEPs from the prior district to students who had 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, but not a "stay put" program, until the hearing to determine a free appropriate public education (FAPE) is completed. (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 FAPE is in the transferee district. Therefore, even if the District is considered the transferee district from July 2012 onwards, principles of stay put do not require District to continue providing the RTC placement and related supporting services offered and implemented by LACOE.

Further, the evidence presented by both parties shows that Student's RTC placement was ordered by the Superior Court, which retained jurisdiction over Student by "suspending" the delinquency proceeding, and only releasing Student for the purpose of commitment at the RTC pursuant to LACOE's June 5, 2012 IEP. The Commitment Order is not an order releasing Student from the Superior Court's jurisdiction. The Commitment Order specifically states that the proceedings against Student remain suspended. None of the boxes regarding placement of Student on probation, released to parents, or case dismissed were

checked. The Commitment Order narrowly provides for the release of Student for transportation to and commitment at the RTC. Likewise, the RTC progress reports support that the RTC considers Student to still be subject to a possible delinquency adjudication once stabilized. Since the evidence in support of the Motion for Stay Put supports that placement at the RTC is a court ordered placement, Student has failed to show that District has any stay put obligation.

In sum, Student's Motion for Stay Put is denied because the September 6, 2012 IEP offering an NPS day program with guidance and counseling was never implemented, and RTC placement and related supporting services, which are the subject of Student's stay put request, were never offered by the District. Further, to the extent the July 2012 RTC placement could be considered an inter-district transfer of LEA from LACOE to the District, stay put does not apply to inter-district summer transfers. Finally, the Motion for Stay Put is also denied because the evidence presented on the motion shows Student's placement at the RTC is a court ordered placement where the Superior Court retained jurisdiction over Student without a final disposition.

Finally, the issue of financial responsibility for the placement and services Student receives after July 31, 2013, and what would be a FAPE is not addressed by this order, which is limited to deciding that District need not provide Student with the requested placement as stay put while the hearing is pending.

ORDER

1. Student's Motion for Stay Put is Denied.

2. This Order is limited to the Motion for Stay Put, and a decision on the merits is reserved for hearing.

Dated: August 1, 2013

/s/
SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings