BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PETALUMA JOINT UNION HIGH SCHOOL DISTRICT.	OAH CASE NO. 2013030028 ORDER GRANTING MOTION FOR STAY PUT

On February 28, 2013, Student filed a request for due process complaint with the Office of Administrative Hearings (OAH), naming Petaluma Joint Union High School District (District).[1] On March 15, 2013, Student filed a motion for stay put. On March 19, 2013, District filed an opposition, supported by declaration and exhibits. On March 20, 2013, Student filed a Reply to Opposition, which included Mother's declaration.

Student filed its motion to stay put because District dropped Student from enrollment on March 12, 2013, because it did not have a current permit for interdistrict transfer. Student asserts that the last agreed upon and implemented IEP was in August 2012, and that the IEP placed Student at the District for the 2012-2013 school year. Student asserts that the District's actions are in retaliation for the due process filing.

In opposition, District asserts that it is not Student's home school district, that Student attended District's schools pursuant to an interdistrict transfer permit, and that the permit granted Student the ability to attend for the 2011-2012 school year. District asserts that Student does have a current permit because Parent did not apply for the 2012-2013 school year. District is unable to explain why it did not previously discover that Student lacked a current permit but indicated that the March 12, 2013 removal of Student from District enrollment was in accordance the legal standards controlling such interdistrict permits. District requests that the motion for stay put be denied, because OAH does not have jurisdiction to determine whether a transfer permit was appropriately denied or revoked.

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, §§ 48915.5, 56505, subd. (d).) This is referred to as "stay put." For purposes of stay put, the current

[1] District appeared as Petaluma City Schools, which includes Petaluma Joint Union High School District and Petaluma City (Elementary) School District.

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, "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.)

The primary responsibility for providing a free appropriate public education (FAPE) to a disabled student rests on a local education agency (LEA). (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 48200.) As a general rule, a student's school attendance is determined by the residency of his parent or guardian. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist*. (2004) 117 Cal.App.4th 47, 57.) Education Code section 48200, California's compulsory attendance law, requires that a student between six and 18 years of age attend school in "the school district in which the residency of either the parent or legal guardian is located." That district usually becomes the LEA responsible for providing a FAPE to an eligible student. (20 U.S.C. § 1401(19); 34 C.F.R. § 300.28(a) (2006); Ed. Code, § 56026.3.)

There are exceptions to the general compulsory education requirement that children attend school in the school district in which one of their parents or their legal guardian resides. Education Code section 48204, subd. (a)(2), provides that a pupil is deemed to have complied with the residency requirements for school attendance "notwithstanding [Education Code] Section 48200" if an agreement for interdistrict attendance has been made between the transferee and transferor districts.

DISCUSSION

The parties are in general agreement regarding the facts that are relevant to the stay put analysis. On February 14, 2011, Mother completed and submitted a Request for Interdistrict Attendance Permit, identifying Cotati-Rohnert Park Unified School District (CRPUSD) as Student's district of residence and the District as the district of desired attendance. Mother clearly states on the request form that Student is subject to an IEP and receives special education services related to math and English. Above Mother's signature is a declaration of acknowledgment regarding accuracy of the information and other conditions, including that the permit be renewed annually. CRPUSD approved the request. In August 2011, District approved issuance of the permit.

For the 2011-2012 school year, Student received special education placement and services from District. The District convened an IEP team meeting on August 31, 2012, which states that Student is placed at Petaluma High School and would receive special academic instruction (SAI), 100 minutes every other day, for the 2012-2013 school year. Parent agreed and accepted this IEP offer and Student started the 2012-2013 school year at the District's high school. District convened an annual IEP team meeting on January 25,

2013, which was continued and completed on February 8, 2013. Parent did not accept the IEP offer and filed this due process on Student's behalf.[2]

Both parties agree that the interdistrict permit was not raised at the August 2012 IEP, or any IEP team meetings thereafter. The permit is not an issue in the complaint. The permit only became an issue after the complaint's filing when the District discovered that there was not a current permit for the 2012-2013 school year, causing District to remove Student from enrollment by letter of March 12, 2013. The District readily admits it did not know about the absence of the permit before the Student's complaint was filed. Also, in her declaration on reply, Mother states that she inquired at CRPUSD in 2012 about again applying for the interdistrict permit, but was told she did not need to do anything because the districts were in "open enrollment" for the year and District never thereafter indicated that another application was necessary. [3]

District argues that OAH does not have jurisdiction to determine the appropriateness of a district's decision regarding issuance of an interdistrict permit. Referring to Education Code section 46600, et al., District asserts that an interdistrict permit requires agreement between both the transferor and transferee districts. The records indicate that District did not enter into an agreement with Student's district of residence, CRPUSD, for a 2012-2013 permit. District states that the process for appealing its decision regarding Student's permit is set forth in Education Code section 46601 and, further, claims that Student is attempting to use the motion for stay put as a means of circumventing the appeal process.

District argues that when a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement, referring to *Verhoeven v. Brunswick Sch. Comm* (1st Cir. 1999) 207 F.3d1, 7-8. Yet, none of the facts presented by either party herein indicate that the agreed-upon and implemented placement of the August 2012 IEP was temporary. All the parties acted in accordance with Student's continued enrollment in the District.

District cites to prior OAH decisions. OAH decisions are not binding precedent, but may be persuasive authority. (Cal. Code Regs., tit. 5, § 3085.) In *Student vs. Cotati-Rohnert Park Unified Sch. Dist.* (April 28, 2006) OAH Case No. 2006040319, OAH denied student's motion for stay put but granted the district's motion to dismiss because OAH did not have jurisdiction over the revocation of an interdistrict transfer. However, OAH denied the stay put in that case because there had never been an agreed upon, implemented IEP.

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[2] Student and District exchange factual assertions regarding Student's attendance since January 2013 and the District's commencement of Site Attendance Review Team (SART) proceedings in March 2013. This issue is not relevant to the stay put analysis.

[3] Student argues that the District should be estopped from removing Student because Student, Mother and even the District relied on Student's continued attendance at the District's high school. This assertion concerns the appropriateness of District's actions regarding the interdistrict permit and is not relevant to the stay put analysis.

Here, there is an agreed upon, implemented IEP developed in August of 2012 for the 2012-2013 school year.

District also refers to *Student v. Fresno Unified School District* (February 25, 2009) OAH Case No. 2008100696 (cited as *Fresno Unified*). Reliance upon *Fresno Unified* is misplaced because the issue before OAH in that matter was whether OAH had the authority to consider and overturn a denial of an interdistrict transfer. *Fresno Unified* did not involve the interplay between stay put and the revocation or denial of an interdistrict transfer. It is further distinguished by the fact that here, District had already provided Student with placement at its high school through the interdistrict transfer process, and affirmed the placement in the IEP's, including the last agreed upon, implemented IEP. Further, the District participated in the development of Student's last IEP and offered Student placement at Petaluma High School.

OAH has previously granted stay put though the placement was initially procured by interdistrict transfer and the district subsequently revoked the permit (*Student v. Fremont Unified School District and* New *Haven Unified School District* (June 21, 2010) OAH Case No. 2010060313). Other administrative rulings have found that stay put can be ordered even if the placement was initially procured through an interdistrict transfer. (*Snohomish Sch. Dist.* 106 LRP 12019 (Was. SEA Oct. 24, 2005) (ordering school district to assist in the enrollment process at another school through the interdistrict transfer process as part of stay put); *Great Meadows Regional Bd. of Educ.* 47 IDELR 274 (NJ SEA Oct. 12, 2006) (ordering maintenance of stay put despite expiration of the interdistrict transfer); *Monrovia Unified Sch. Dist.* 102 LRP 10082 (Cal. SEA Aug. 30, 2001) (ordering maintenance of stay put despite expiration of the interdistrict transfer).) These authorities are persuasive.

The unequivocal language of title 20 United States Code section 1415(j) guarantees that a student remain in his or her then current placement during the pendency of a dispute. (*Honig v. Doe* (1988) 484 U.S. 305, 329 [108 S.Ct. 592, 98 L.Ed.2d 686].) The purpose of stay put is to prevent school districts from unilaterally denying placement to a student while the parties are litigating the very issue of placement. (*Id.* at p. 426.) OAH has jurisdiction to hear disputes concerning placement of students with special needs; accordingly, OAH has jurisdiction to determine stay put. District cites no legal authority that limits OAH's jurisdiction over the issue of stay put because the current placement was arrived at by interdistrict transfer.[4]

The principle of stay put exists to prevent a school district from utilizing self-help and unilaterally changing or denying a student an educational placement during the pendency of a dispute. District may not unilaterally alter Student's last agreed upon and implemented placement. Accordingly, Student's request for stay put is granted.

[4] This order does not decide whether OAH has jurisdiction to consider the merits of a revocation or denial of an interdistrict transfer.

ORDER

District is ordered to maintain Student's placement at its Petaluma High School, consistent with the last agreed upon and implemented IEP of August 31, 2012.

Dated: March 20, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings