

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

S.C., a minor, by his parents, C.C. and S.C.,
as next friends,

Plaintiff,

v.

PALO ALTO UNIFIED SCHOOL
DISTRICT,

Defendant.

Case No. 5:14-cv-00980 HRL

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

[Re: Dkt. No. 11]

Plaintiff S.C., by and through his parents, C.C. and S.C. (collectively, Parents), move for a preliminary injunction under the “stay put” provision of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415(j). Defendant Palo Alto Unified School District (District) opposes the motion. All parties have expressly consented that all proceedings in this matter may be heard and finally adjudicated by the undersigned. 28 U.S.C. § 636(c); Fed. R. Civ. P. 73. Upon consideration of the moving and responding papers, as well as the arguments of counsel, the court grants the motion.

BACKGROUND

The underlying facts are largely undisputed.

S.C. is a 12-year old boy with Autism, eligible for special education services. According to the complaint, he has deficits in fine and visual motor skills, sensory processing, behavior, and

1 speech and language, with a history of severe food allergies and pica behavior (i.e., mouthing or
2 ingesting non-edible objects). (First Amended Complaint, Dkt. 8, ¶ 8).

3 S.C. resided in the Pajaro Valley Unified School District (Pajaro Valley) until early 2013
4 when he and his family moved to Palo Alto. He enrolled in the District in March 2013. Pajaro
5 Valley and Palo Alto are located in separate Special Education Local Plan Areas (SELPA).

6 Parents provided the District with a copy of S.C.’s last agreed-upon individualized
7 education program (IEP) implemented by Pajaro Valley. That IEP provided a home-based
8 program consisting of:

- 9 • 15 hours per week of applied behavior analysis (ABA) instruction;
- 10 • 2 hours per week of supervision of the home ABA program;
- 11 • 2 hours per week of language and speech (LAS) therapy; and
- 12 • 2 hours per week of occupational therapy (OT).

13 The parties met, but could not agree upon S.C.’s 30-day interim placement---namely,
14 whether his special education services would be provided at his home or at school. The District
15 offered the same type and amount of services as those in S.C.’s prior IEP, but in an isolated
16 classroom that S.C. could access without contacting other students. Parents wanted a home-based
17 program that replicated the IEP implemented in Pajaro Valley.

18 The District later convened a regular IEP meeting in May 2013 to discuss S.C.’s final
19 placement. The District proposed placing him in school with specialized academic instruction in a
20 special day class at Terman Middle School; 30 minutes of group LAS twice per week; 30 minutes
21 of individual LAS once per week; 60 minutes of individual OT per week; 90 minutes of individual
22 behavior intervention services 5 times per week; and round trip transportation. Parents rejected
23 the District’s offer and said that they intended to provide S.C. with a privately-funded home-based
24 program and to seek reimbursement from the District.

25 Shortly after, S.C. filed an administrative complaint, claiming that the District failed to
26 offer a free and appropriate public education for the school years 2012-13 and 2013-14. Among
27 other things, he argued that the District’s 30-day interim placement offer violated IDEA’s “stay
28 put” requirements. The Office of Administrative Hearings (OAH) ruled in the District’s favor on

1 all issues. S.C. then filed this lawsuit, seeking judicial review of the OAH’s decision.

2 In the instant motion, S.C. seeks a “stay put” order requiring the District to provide the
3 home-based instruction described in his last agreed-upon and implemented Pajaro Valley IEP,
4 pending resolution of his dispute with the District.

5 **DISCUSSION**

6 During the pendency of any proceedings under IDEA § 1415, and “unless the State or local
7 educational agency and the parents otherwise agree, the child shall remain in the then-current
8 educational placement of the child or, if applying for initial admission to a public school, shall,
9 with the consent of the parents, be placed in the public school program until all such proceedings
10 have been completed.” 20 U.S.C. § 1415(j). This so-called “stay put” provision “requires the
11 educational agency to maintain a disabled child’s educational program until any placement dispute
12 between the agency and the child’s parents is resolved.” Johnson ex rel Johnson v. Special Educ.
13 Hearing Office, 287 F.3d 1176, 1179 (9th Cir. 2002). “For the purpose of § 1415(j)’s ‘stay put’
14 provision, the current educational placement is typically the placement described in the child’s
15 most recently implemented IEP.” Id. at 1180. “Four kinds of proceedings are mentioned in §
16 1415: (1) mediation; (2) due process hearings; (3) state administrative review; and (4) ‘a civil
17 action’ begun by a complaint under the IDEA, ‘which action may be brought in any State court of
18 competent jurisdiction or in a district court of the United States, without regard to the amount in
19 controversy.’” Joshua A. v. Rocklin Unified Sch. Dist., 559 F.3d 1036, 1038 (9th Cir. 2009)
20 (quoting 20 U.S.C. § 1415(e), (f), (g), (i)). California has adopted a similar “stay put” provision.
21 See Cal. Educ. Code § 56505(d) (“[D]uring the pendency of the hearing proceedings, including
22 the actual state-level hearing, or judicial proceeding regarding a due process hearing, the pupil
23 shall remain in his or her present placement . . . unless the public agency and the parent or
24 guardian agree otherwise.”).

25 There is no apparent dispute as to the legal standard governing S.C.’s motion. A stay put
26 motion functions as an “automatic” preliminary injunction. Joshua A., 559 F.3d at 1037. “This is
27 a far cry from saying that any request for relief under the ‘stay put’ provision must automatically
28 be granted.” A.D. v. Dep’t of Education, No. 12-00307 JMS-KSC, 2012 WL 5292865 at *8 (D.

1 Hawai’i, Oct. 25, 2012) (citations omitted). Rather, the “automatic” nature of the motion simply
2 “mean[s] that the moving party need not show the traditionally required factors (e.g., irreparable
3 harm) in order to obtain preliminary relief.” Joshua A., 559 F.3d at 1037.¹

4 S.C. contends that the District’s obligation is spelled out in M.S. ex rel G. v. Vashon Island
5 School Dist., in which the Ninth Circuit held that:

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7 when a dispute arises under the IDEA involving a transfer student,
8 and there is disagreement between the parent and student’s new
9 school district about the most appropriate educational placement, the
10 new district will satisfy the IDEA if it implements the student’s last
11 agreed-upon IEP; ***but if it is not possible for the new district to
implement in full the student’s last agreed-upon IEP, the new
district must adopt a plan that approximates the student’s old IEP
as closely as possible.*** The plan thus adopted will serve the student
until the dispute between parent and school district is resolved by
agreement or by administrative hearing with due process.

12 337 F.3d 1115, 1134 (9th Cir. 2003) (emphasis added). Under this holding, S.C. argues that the
13 District must replicate the services he received under the Pajaro Valley IEP, including that the
14 services be provided in his home and not in a school classroom, unless doing so would be
15 impossible. The District maintains that, while replicating S.C.’s Pajaro Valley IEP is not
16 impossible, it has no obligation to do so. Rather, in the District’s view, S.C.’s transfer from one
17 educational jurisdiction to another means that he cannot rely on his prior IEP for “stay put” and
18 that the District is only obliged to provide “comparable” services, whether or not replication of the
19 Pajaro Valley IEP is feasible.

20 This court is unpersuaded by the District’s arguments.

21 To begin, defendant has not convincingly demonstrated that the “to the extent possible”
22 language in Vashon Island has been superceded by statute. Pointing out that Vashon Island’s
23 holding was based on a letter from the Office of Special Education Programs (OSEP), the District
24 says that the OSEP letter was meant to provide guidance to school districts on their obligations to

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27 ¹ By contrast, where a party seeks to enjoin an existing “stay put” order, the traditional
28 preliminary injunction analysis applies. Johnson, 287 F.3d at 1180. Additionally, “[t]he
automatic injunction standard . . . only applies when the court considers a stay put motion; it does
not apply to a preliminary injunction motion that affects a stay put invocation, but is not itself the
invocation.” A.D. ex rel L.D., 2012 WL 5292865 at *7 (citation omitted).

1 transfer students in the absence of controlling statutory law. The District goes on to argue that
2 there now is a controlling statute. According to defendant, amendments to IDEA provisions
3 concerning transfer students, effective July 1, 2005, require only that school districts provide
4 services that are “comparable,” not identical, to the student’s prior IEP. For example, with respect
5 to a student’s transfer between school districts within the same state, IDEA provides:

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7 In the case of a child with a disability who transfers school districts
8 within the same academic year, who enrolls in a new school, and
9 who had an IEP that was in effect in the same State, the local
10 educational agency shall provide such child with a free appropriate
11 public education, including services *comparable* to those described
12 in the previously held IEP, in consultation with the parents until
13 such time as the local educational agency adopts the previously held
14 IEP or develops, adopts, and implements a new IEP that is
15 consistent with Federal and State law.

16 20 U.S.C. § 1414(d)(2)(C)(i)(I) (emphasis added); see also 34 C.F.R. § 300.323(e). California has
17 a similar law, requiring a school district to provide an interim educational placement with
18 “services *comparable* to those described in the previously approved individualized education
19 program, in consultation with the parents,” for up to 30 days when the student transfers between
20 districts that are not operating under the same SELPA. Cal. Educ. Code § 56325(a)(1) (emphasis
21 added). The District contends that if “stay put” truly applied to transfer students, then it would
22 make no sense for these statutes to have been enacted.

23 However, the District has not cited, nor has this court found, any authority for the
24 proposition that IDEA § 1414(d)(2)(C)(i)(I) supercedes Vashon Island’s “to the extent possible”
25 language.² Moreover, the federal and state statutes and regulations cited by the District, on their
26 face, concern a school district’s obligations when a student transfers from one district to another.
27 They do not address what a school district is obliged to do when a student’s placement is disputed
28 and proceedings under IDEA § 1415 are pending. That is the situation addressed in Vashon
Island.

² A cite check reveals that a number of cases recognize that Vashon Island has been “superceded
by statute.” But, those cases (which cite to Vashon Island for other reasons) note that the opinion
has been “superseded on other grounds by 20 U.S.C. § 1414(d)(1)(B)”---a completely different
section of IDEA than the one cited by the District.

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- 2 hours per week of language and speech therapy; and
- 2 hours per week of occupational therapy.

SO ORDERED.

Dated: June 2, 2014



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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5:14-cv-00980-HRL Notice has been electronically mailed to:
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