



## CLIENT UPDATE

### *Stay Put for Special Education Student Not Fully Immunized*

*For further information, please contact Paul Gant at  
(916) 932-2500 or [pgant@kblegal.us](mailto:pgant@kblegal.us)*

Recently, the Office of Administrative Hearing (Special Education Division) issued an order regarding stay put for a special education Student who was not fully immunized.

The Student was attending Bellflower School District (“Bellflower”), and his IEP provided for placement in a special day class (SDC) with special education services. In January 2018, the Student transferred to Chino Unified School District (“Chino”). When a special education student transfers to a new school district mid-year, the new district is required to adopt an interim IEP that approximates the student’s previous IEP as closely as possible for thirty (30) days or until the previous IEP is adopted or a new IEP is developed.<sup>1</sup>

Chino offered Student placement in an SDC on the condition that he would become fully immunized. Parent refused to immunize Student with all required vaccinations. In the alternative, Chino offered Home Hospital Instruction (HHI).<sup>2</sup> Chino’s position was that the immunization requirement specified in California Health and Safety Code section 120335<sup>3</sup> rendered the District unable to provide classroom placement to Student, and the HHI approximated the Bellflower IEP as closely as possible.

The Judge ordered that, during the pendency of this due process matter, Student’s stay put placement shall consist of the placement and services stated in his Bellflower Unified School District IEP of Sept. 8, 2017. The Judge further noted despite the offer of Chino for HHI, this cannot replace the placement and services in the Sept. 8, 2017 IEP and thus, is not an effective stay put. As such, Student’s stay put is the placement and services specified in the Bellflower Sept. 8, 2017 IEP, which includes placement in a special day class in a public preschool, for the entire school day with 180 minimum per day of specialized academic instruction five (5) days per week, plus two (2) minimum sessions of weekly group speech and language therapy within a maximum of three (3) students and transportation.

A complete copy of the OAH order is attached for your reference and review.

If you have any questions regarding immunization requirements and/or special education compliance concerns, please contact Kingsley Bogard LLP.

<sup>1</sup> 20 U.S.C. § 1414(d)(2)(c)(i)(I); 34 C.F.R. § 300.323, subd. (e); Ed. Code, § 56325 subd. (a)(1).

<sup>2</sup> Home and Hospital Instruction Program is available for students with a temporary disability, which makes attendance in the regular day classes or alternative education program impossible or inadvisable. (Cal. Ed. Code, § 48206.3.)

<sup>3</sup> California Health and Safety Code section 120335 provides that a pupil shall not be admitted to attend school unless he/she has been fully immunized with specific immunizations. 1

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2018071218

ORDER GRANTING MOTION FOR  
STAY PUT

On July 31, 2018, Student filed a motion for stay put. Chino Valley Unified School District filed an opposition on August 10, 2018, which was considered over Student's objection that it was untimely. As discussed below, the motion for stay put is granted.

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, § 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.)

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).)

California Health and Safety Code, section 120335, provides that public schools shall not admit students who have not been fully immunized against a specific list of diseases. However, California Health and Safety Code, section 120335, subdivisions (f), (g) and (h) contain exceptions pursuant to which certain individuals' rights may prevail over the general policy. Specifically, California Health and Safety Code, section 120335, subdivision (h), states: "This section does not prohibit a pupil who qualifies for an individualized education program, pursuant to federal law and Section 56026 of the Education Code, from accessing

any special education and related services required by his or her individualized education program.”

## DISCUSSION

Student’s complaint alleges he attended Bellflower Unified School District until December 2017, pursuant to an IEP dated September 8, 2017, to which Parent consented. The September 8, 2017 IEP offered placement in a special day class in a public preschool, for the entire school day, with 180 minutes per day of specialized academic instruction five days per week, plus two 20 minute sessions of weekly group speech and language therapy within a group of a maximum of three students, and transportation.

The family moved to Chino Valley Unified School District in January 2018. Student had not been fully immunized against the complete list of diseases specified by California Health and Safety Code, section 120335. Student contends that he was not permitted to enroll. Chino Valley convened IEP meetings for Student on February 14, 2018, and April 24, 2018, at which it offered a special day class in a public preschool. Chino Valley offered the special day class placement on the condition Student was vaccinated with all generally required immunizations. Alternatively, if Student was not vaccinated, Chino Valley offered a home hospital program. Parent did not consent. Thus, Student’s last agreed upon and implemented IEP was the September 8, 2017 IEP from Bellflower.

Notwithstanding Parent’s refusal to immunize Student with all the normally required immunizations, Student’s last agreed upon and implemented IEP from Bellflower required placement in a school environment, with specified services. Student’s Bellflower September 8, 2017 IEP specifically required placement in a preschool environment, with specified services. Pursuant to California Health and Safety Code, section 120335, subdivision (h) Student is not prohibited accessing these.<sup>1</sup> Home instruction cannot replace the placement and services in the September 8, 2017, IEP and thus is not stay put. (See, e.g., *Student v. Long Beach Unified School District and Marshall Academy of the Arts* (October 9, 2017 Order Granting Stay Put) OAH Case No. 2017090407.) Accordingly, Student’s stay put is the placement and services specified in the Bellflower September 8, 2017 IEP.

---

<sup>1</sup> This ruling is limited to Student’s stay-put placement pursuant to the Bellflower IEP. Student’s complaint includes a claim that Chino Valley denied him a free appropriate public education for the 2017-2018 school year, by failing to provide Student with services comparable to those included in the September 8, 2017 IEP from Bellflower when he transferred to Chino Valley in January 2018. Chino Valley argues that the immunization requirement renders it unable to provide classroom placement to Student, and thus that the home hospital program it offered “approximated” the September 8, 2017, IEP “as closely as possible.” This ruling determines only Student’s stay put, and does not address the merits of Student’s claim that Chino Valley’s IEP offers denied Student a FAPE.

ORDER

1. Student's motion for stay put is granted.
2. During the pendency of this due process matter, Student's stay put placement shall consist of the placement and services stated in his Bellflower Unified School District individualized education program dated September 8, 2017.

DATE: August 14, 2018

DocuSigned by:

*June Lehrman*

08F28922672E400

JUNE LEHRMAN

Administrative Law Judge

Office of Administrative Hearings