BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016070639 ORDER DENYING MOTION FOR STAY PUT

On July 13, 2016, Student filed a motion for stay put concurrently with a request for due process hearing and mediation (complaint). On July 15, 2016, District filed an opposition. On July 19, 2016, Student filed a response to District's opposition. For the reasons discussed below, Student's motion is denied.

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.)

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).)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight by Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Educ.* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for the Continuing Ed. at Malcolm X (PS 79) v. New York City Bd. of Ed.* (2d Cir. 1980) 629

F.2d 751, 756; *Tilton by Richards v. Jefferson County Bd. of Educ.* (6th Cir. 1983) 705 F.2d 800, 805

DISCUSSION

Student's motion is supported only by an unauthenticated signed copy of the Parent Participation page of Student's June 7, 2016 individualized education program. Student asserts that on June 7, 2016, District offered Student placement for the 2016 extended school year and the 2016-2017 school year at Speech and Language Development Center. Student's complaint alleges, for purposes of this motion, that District failed to implement the IEP by not allowing Student to attend SLDC during 2016 extended school year, and therefore seeks stay put at SLDC as the status quo.

District's opposition is supported by a sworn declaration and an authenticated copy of correspondence to all parents relating to its current relationship with SLDC. District does not dispute that Student's June 7, 2016 IEP offer of placement was at SLDC, or that it was an available placement option when District made the offer. However, District persuasively established that District and SLDC are currently involved in a contract dispute, which arose after District offered Student placement at SLDC. SLDC has refused to service any District students and will not currently accept them. District contends it is researching similar alternative placements for Student while trying to resolve the dispute with SLDC; but, it cannot currently place Student at SLDC as a District contracted-non-public school. District also asserts that, if SLDC becomes available, it will place Student there. (See *Student v. Ripon Unified School Dist.* (April 12, 2011) Cal.Offc.Admin.Hrngs. Case No. 2011030842, Order Denying Motion for Stay Put because of no contract with non-public agency.)

Student argues in response that District has not yet offered any alternative to Student, and therefore Student has missed extended school year. He argues that he should be allowed to attend SLDC to preserve the status quo until the dispute between the school and District is resolved. Student's argument is not persuasive under these facts.

Although District is obligated to provide a free appropriate public education to Student, SLDC has refused to accept students as a District-contracted non-public school. Therefore, District is obligated to offer an appropriate and similar alternative placement to Student to preserve the status quo during the pendency of this matter.

Student's motion for stay put at SLDC is denied without prejudice. Student may refile his stay put motion if circumstances change. However, if Student chooses to renew his motion for stay put, Student shall include a complete and executed copy of the last agreed upon and implemented IEP.

IT IS SO ORDERED.

DATE: July 22, 2016

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Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings